

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

WILLIAM W. MOORE and JERI MOORE,)
d/b/a RESPONSE MARKETING,)

Plaintiff,)

vs.)

Case No. 88-C-402-E

PRUDENTIAL-BACHE SECURITIES,)
INC. and PRUDENTIAL BANK AND)
TRUST COMPANY,)

Defendants and Third)
Party Plaintiffs,)

vs.)

AMERICANS FOR ROBERTSON, INC.,)

Third Party Defendant.)

FILED

Jack C. Smith, Clerk
U.S. District Court
Northern District of Oklahoma

ORDER OF DISMISSAL WITH PREJUDICE

THIS MATTER, having come before this Court by way of the plaintiffs having filed a "Motion For Order Of Dismissal With Prejudice", it is the finding of the Court that plaintiff's Motion be granted.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the plaintiffs' action against the defendants be, and is hereby, dismissed with prejudice.

DATED this _____ day of December, 1988.

57 JAMES O. ELISON

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 15 1988

JACK S. SILVER, CLERK
U.S. DISTRICT COURT

MICKEY C. MILLER,
Plaintiff,

vs.

No. 87-C-859-E

UNITED PARCEL SERVICE, INC.,
et al.,

Defendants.

O R D E R

This matter comes on before the Court on Defendant United Parcel Service, Inc.'s motion for summary judgment and Defendant Chauffeurs, Teamsters and Helpers Union, Local No. 516 International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers' motion for summary judgment. After reviewing the pleadings and the affidavits filed herein the Court finds as follows:

Rule 56(c) of the Federal Rules of Civil Procedure provides for summary judgment against a party who, after time for discovery, fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. Celotex Corp. v. Catrett, ____ U.S. ____, 106 S.Ct. 2548 (1986).

The parties agree that Plaintiff called United Parcel Service on December 22, 1986 saying he hurt his ankle and needed assistance. They told him he would not be provided a new driver, he would be provided a "helper". Miller picked up the helper.

Plaintiff admits that he let the helper, an unauthorized person, drive his vehicle. The Safety Rules signed by Miller on March 16, 1982 state at Paragraph V B "No one may drive your vehicle unless authorized by United Parcel Service, except in an emergency." Miller had no recollection of signing this rule statement. On February 9, 1987 Mr. Miller was discharged, for two reasons, failure to report an accident and allowing an unauthorized person to operate his vehicle.¹

Plaintiff claims that the contract between him and United Parcel Service was breached when he was discharged without just cause. Plaintiff claims the discharge was pre-textual in nature and that the real reason he was terminated was because of grievances he had filed against United Parcel Service. We will address here the issue of termination based on the premise of letting an unauthorized person drive the truck.

Hindsight now compels Plaintiff to contend that the reason he let the unauthorized person drive the vehicle was that he was in an emergency situation, as proscribed by Paragraph V B of the Safety Rules. The Court does not find that these events rise to the level of an emergency situation under the safety rules. Miller, after hurting his ankle, asked United Parcel Service for help. He was given a helper, not a driver. United Parcel Service at that time decided the situation did not warrant a driver. For

¹United Parcel Service asserts that either of the two reasons is sufficient, because a controversy still exists as to whether or not the scratch to the truck constituted an accident and whether or not Miller reported the accident.

him to unilaterally decide that the express direction of United Parcel Service regarding the situation was not correct was inappropriate. It was no longer an emergency when Miller was able to call United Parcel Service and asked for their intervention. This is especially clear if Paragraph V B is read in conjunction with Paragraph V A.

Plaintiff Miller alleges that even though he let an unauthorized driver drive his truck, and even though he knew this was against the rules and even though the "helper" scratched the truck the real reason he was discharged was for his filing of grievances against United Parcel Service. This evidence of pre-text is merely an allegation of Plaintiff's without any factual basis. There is no evidentiary basis for this allegation. Mere allegations without some type of factual basis are insufficient to allow these claims to stand. The Defendant United Parcel Service is firm in its evidence of what happened and why.²

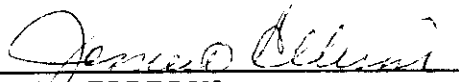
The Court finds the reason Miller was terminated was for his failure to follow safety rules in allowing an unauthorized person to drive his vehicle. The Court finds no pre-textual reason for this firing. Thus, Defendant United Parcel Service's motion for summary judgment is granted. As Defendant United Parcel Service's motion for summary judgment is granted, Defendant Chauffeurs, Teamsters and Helpers Union, Local No. 516 International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers'

²See Deposition Exhibit 20, Appendix of Summary Judgment evidence filed October 11, 1988.

motion for summary judgment must also be granted.

IT IS THEREFORE ORDERED that the Defendants' motions for summary judgment are granted. United Postal Service is directed to draft a proposed form of judgment within ten (10) days.

ORDERED this 15th day of December, 1988.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DEREK LEE WILSON,
Plaintiff,
v.
DISTRICT ATTORNEY, OSAGE
COUNTY, OKLAHOMA,
Defendant.

FILED
DEC 19 1988
Jack C. Silver, Clerk
U.S. DISTRICT COURT
88-C-688-E


ORDER

The court has for consideration the Report and Recommendation of the Magistrate filed November 17, 1988, in which the Magistrate recommended that defendant's Motion to Dismiss be granted. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the court has concluded that the Report and Recommendation of the Magistrate should be and hereby is affirmed.

It is therefore Ordered that defendant's Motion to Dismiss plaintiff's civil rights complaint pursuant to 42 U.S.C. §1983 is granted.

Dated this 13th day of December, 1988.


JAMES O. ELISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MICHAEL WORLAND and MARY
WORLAND,

Plaintiffs,

vs.

OHIO AIR MAINTENANCE,
INCORPORATED, a corporation;
MID-STATES AIRCRAFT ENGINES,
INC., a corporation;
MILLER/RICHARDS AIRCRAFT
SALES, INC., a corporation;
and TEXTRON LYCOMING, a
subsidiary of TEXTRON, INC.,
a corporation,

Defendants.

No. 88-C-1144-E

FILED


DEC 15 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL

Upon Stipulation of Dismissal by the Plaintiffs and the Defendant, Ohio Air Maintenance, Incorporated, the Court determines that an Order of Dismissal should be entered, as to the Defendant, Ohio Air Maintenance, Incorporated.

IT IS ORDERED that the above-styled and numbered cause be, and the same is hereby dismissed, without prejudice, as to the Defendant, Ohio Air Maintenance, Incorporated, with each party to bear their own costs.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DANNY J. VARNELL,

Plaintiff,

v.

OTIS R. BOWEN, M.D.,
SECRETARY OF HEALTH AND
HUMAN SERVICES,

Defendant.

86-C-1055-E

FILED
DEC 21 1988
Jack C. Smith, Clerk
U.S. DISTRICT COURT


ORDER

The court has for consideration the Findings and Recommendations of the Magistrate filed November 21, 1988, in which the Magistrate recommended that the Secretary's decision denying plaintiff's application for disability insurance benefits and supplemental security income disability benefits be reversed. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed.

It is therefore Ordered that the Secretary's decision is hereby reversed, and plaintiff is found to be disabled and entitled to disability insurance benefits and supplemental security income disability benefits under Titles II and XVI of the Social Security Act, 42 U.S.C. §§416(I), 423, and 1381.

Dated this 13th day of December, 1988.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 15 1988

MONTE L. FRUITS, ANNE HILL
FRUITS,

Plaintiffs,

-vs-

RAYMOND L. THOMPSON, THOMPSON
AUDIO-VISUAL, INC., COMPUTER
WAREHOUSE, INC., DOES 1 through
10,

Defendants.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

Case No. 88-C-762-E

DISMISSAL WITH PREJUDICE

COME NOW the Plaintiffs, Monte L. Fruits and Anne Hill Fruits, by and through their attorneys of record, Nichols, Wolfe, Stamper, Nally & Fallis, Inc., and hereby dismiss with prejudice their claim against the Defendants in the above-styled and numbered cause. Each party is to bear its own attorneys' fees.

NICHOLS, WOLFE, STAMPER,
NALLY & FALLIS, INC.

By:

W. Thomas Finley
W. Thomas Finley, OBA #2922
Diane O. Palumbo, OBA #12154
400 Old City Hall Building
124 East Fourth Street
Tulsa, Oklahoma 74103
(918) 584-5182

ATTORNEYS FOR PLAINTIFFS
MONTE L. FRUITS and ANNE HILL
FRUITS

37

Certificate of Service

I hereby certify that on this fourteenth day of December, 1988, a true and correct copy of the above and foregoing Dismissal with Prejudice was hand delivered to: David F. James, Houston & Klein, 320 South Boston, Tulsa, Oklahoma 74103, attorney for Defendants.

W. Thomas Finley
W. Thomas Finley

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RONALD CLYDE BROWN; RHANDA S.
BROWN; ARROW SPRINGS THIRD
DEVELOPMENT CO., LTD., an
Oklahoma limited partnership;
THE FIRST NATIONAL BANK & TRUST
CO. OF BROKEN ARROW, OKLAHOMA;
COUNTY TREASURER, Tulsa County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

CIVIL ACTION NO. 87-C-945-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 13th day
of Dec, 1988. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Nancy Nesbitt Blevins, Assistant United States
Attorney; the Defendants, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by Doris L. Fransein, Assistant District
Attorney, Tulsa County, Oklahoma; and the Defendants, Ronald
Clyde Brown; Rhanda S. Brown; Arrow Springs Third Development
Co., Ltd., an Oklahoma limited partnership; and The First
National Bank & Trust Co. of Broken Arrow, Oklahoma, appear not,
but make default.

The Court being fully advised and having examined the
file herein finds that the Defendant, Ronald Clyde Brown, was
served with Summons and Complaint on May 10, 1988; that the

Defendant, Rhanda S. Brown, was served with Summons and Complaint on February 11, 1988; that Defendant, Arrow Springs Third Development Co., Ltd., an Oklahoma limited partnership, acknowledged receipt of Summons and Complaint on December 6, 1987; that Defendant, The First National Bank & Trust Co. of Broken Arrow, Oklahoma, acknowledged receipt of Summons and Complaint on November 27, 1987; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on November 16, 1987; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on November 16, 1987.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on December 4, 1987; and that the Defendants, Ronald Clyde Brown; Rhanda S. Brown; Arrow Springs Third Development Co., Ltd., an Oklahoma limited partnership; and The First National Bank & Trust Co. of Broken Arrow, Oklahoma, have failed to answer and their default has therefore been entered by the Clerk of this Court on July 7, 1988.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

LOT TWO (2), BLOCK THREE (3), ARROW SPRINGS
THIRD, AN ADDITION TO THE CITY OF BROKEN
ARROW, TULSA COUNTY, STATE OF OKLAHOMA,
ACCORDING TO THE RECORDED PLAT THEREOF.

The Court further finds that on July 21, 1978, the Defendants, Ronald Clyde Brown and Rhanda S. Brown, executed and delivered to First Continental Mortgage Co., a corporation, their mortgage note in the amount of \$36,800.00, payable in monthly installments, with interest thereon at the rate of nine and one-half percent (9.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Ronald Clyde Brown and Rhanda S. Brown, executed and delivered to First Continental Mortgage Co., a corporation, a mortgage dated July 21, 1978, covering the above-described property. Said mortgage was recorded on July 25, 1978, in Book 4342, Page 1169, in the records of Tulsa County, Oklahoma.

The Court further finds that on September 27, 1985, First Continental Mortgage Co. assigned unto the Administrator of Veterans Affairs the above-described note and mortgage. This Assignment was filed of record on October 22, 1985, in Book 4900, Page 1978 in the records of Tulsa County, Oklahoma. On December 16, 1985, a Corrective Assignment was filed of record in Book 4912, Page 1907 in the records of Tulsa County, Oklahoma. This Corrective Assignment was again filed on February 12, 1986, in Book 4924, Page 174 in the records of Tulsa County, Oklahoma.

The Court further finds that on February 17, 1988, Rhanda Sue Brown a/k/a Sue Brown filed her voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 88-00372-C. On November 2, 1988, the United States Bankruptcy Court for the

Northern District of Oklahoma entered its order modifying the automatic stay afforded the debtor by 11 U.S.C. § 362 and directing abandonment of the real property subject to this foreclosure action and which is described above.

The Court further finds that the Defendants, Ronald Clyde Brown and Rhanda S. Brown, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Ronald Clyde Brown and Rhanda S. Brown, are indebted to the Plaintiff in the principal sum of \$37,500.31, plus interest at the rate of 9.5 percent per annum from December 1, 1986 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has no lien on the property which is the subject matter of this action by virtue of ad valorem taxes. All taxes, including taxes for the year 1987, have been paid.

The Court further finds that the Defendant, Board of County Commissioners, claims no right, title, or interest in the subject real property.

The Court further finds that the Defendants, Arrow Springs Third Development Co., Ltd., an Oklahoma limited partnership, and The First National Bank & Trust Co. of Broken Arrow, Oklahoma, are in default and have no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Ronald Clyde Brown in personam and Rhanda S. Brown in rem, in the principal sum of \$37,500.31, plus interest at the rate of 9.5 percent per annum from December 1, 1986 until judgment, plus interest thereafter at the current legal rate of 8.55 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Arrow Springs Third Development Co., Ltd., an Oklahoma limited partnership; The First National Bank & Trust Co. of Broken Arrow, Oklahoma; and County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein
in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the
Clerk of the Court to await further Order of the Court.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from
and after the sale of the above-described real property, under
and by virtue of this judgment and decree, all of the Defendants
and all persons claiming under them since the filing of the
Complaint, be and they are forever barred and foreclosed of any
right, title, interest or claim in or to the subject real
property or any part thereof.


S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


NANCY NESBITT BLEVINS
Assistant United States Attorney


DORIS L. FRANSEIN
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

#037

FILED

DEC 15 1988

HUGO A. KEIM and ALICIA KEIM,)
Plaintiff,)

Jack C. Silver, Clerk
U.S. DISTRICT COURT

v.)

Case No. 87-C-603-C

ROY THIGPEN PROPERTIES, INC.,)
and AGS TITLE COMPANY, INC.,)
a/k/a AGS TITLE CO., INC.,)
Defendants.)

ORDER OF DISMISSAL WITH PREJUDICE

On the 14th day of Dec, 1988, this matter came on before the undersigned Judge of the District Court upon the parties' Joint Motion for Dismissal with Prejudice and the Court finds that this matter should be dismissed with prejudice to any party's right to refile the same.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED that the claims of plaintiffs, Hugo A. Keim and Alicia Keim, against defendants, Roy Thigpen Properties, Inc. and AGS Title Company, Inc., a/k/a AGS Title Co., Inc., are hereby dismissed with prejudice to the refiling of same.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Thigpen's First Amended Counterclaim and alternative theories or claims for relief included in Defendant Thigpen's First Amended Answer, First Amended Affirmative Defenses and First Amended Counterclaim of Defendant Roy Thigpen Properties, Inc., filed on

or about February 29, 1988, are hereby dismissed with prejudice to the refiling of same.


JUDGE OF THE DISTRICT COURT

Steven A. Heath OBA #4036
Edward F. Montgomery OBA #6311
BLACKSTOCK JOYCE POLLARD & MONTGOMERY
515 S. Main, Suite 300
Tulsa, Oklahoma 74103
(918) 585-2751
Attorneys for Plaintiffs
Hugo A. Keim and Alicia Keim

Of Counsel:
Howard C. Emmerman
William M. McErlean
RUDNICK & WOLFE
203 North LaSalle Street
Suite 1800
Chicago, Illinois 60601

John E. Dowdell
NORMAN, WOHLGEMUTH & THOMPSON
909 Kennedy Building
Tulsa, Oklahoma 74103
Attorneys for Defendant
AGS Title Company, Inc.,
a/k/a AGS Title Co., Inc.

Jef T. Stites
3311 East 30th St.
Tulsa, Oklahoma 74114
Attorney for Defendant
Roy Thigpen Properties, Inc.

SPLD20/004

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

TEXACO INC., a Delaware
corporation, and BRIDGELINE
GAS DISTRIBUTION COMPANY, a
Delaware corporation,

Plaintiffs

vs.

CARL N. COOPER, an individual;
WILLIAM J. COLLIER, III, an
individual; CANDACE F. TAYLOR,
an individual; MORGAN HINES
AND ASSOCIATES, an Oklahoma
partnership or corporation;
TIME EXPLORATION, an Oklahoma
partnership or corporation;
CF PRODUCTION, an Oklahoma
partnership or corporation; and
RECOVERY RESOURCES CORPORATION,
a Colorado corporation,

Defendants.

Case No. 87-C-177-C

F I L E D

DEC 15 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

JUDGMENT

Came on for consideration the Joint Motion of the Plaintiffs, Texaco, Inc. and Bridgeline Gas Distribution Company, and the Defendants, William J. Collier, III and Morgan Hines & Associates, Inc., to Approve their Settlement Agreement a copy of which is attached as Exhibit "A" to such Joint Motion filed on December 5, 1988. It appearing that a settlement and compromise of the claims asserted by Plaintiffs against such Defendants has been reached and that such Defendants, in accordance with the terms of the Settlement Agreement, have agreed and consented to a judgment in this action, without admitting liability or any of the facts alleged by Plaintiffs against such Defendants herein accept jurisdiction of this Court over the subject matter and the

parties, and for the purpose of securing certain obligations of the Defendants under the settlement agreement. Plaintiffs, Texaco, Inc. and Bridgeline Gas Distribution Company, are represented by James D. Hurley and by their local counsel, Gable & Gotwals, Inc. by Robert S. Glass, and Defendants are represented by James E. Green, Jr.

The Court makes the following FINDINGS upon review of the record herein:

1. This Court has jurisdiction over the subject matter pursuant to 28 U.S.C. § 1332, and venue is properly laid in the Northern District of Oklahoma pursuant to 28 U.S.C. § 1391. This Court has in personam jurisdiction over these Defendants pursuant to OKLA. STAT. tit. 12, § 2001 et seq. (1984).

2. In the Joint Motion to Approve Settlement Agreement filed on December 2, 1988, the parties presented to the Court an executed Settlement Agreement under the terms of which Defendants consent to the entry of judgment against them, without admitting liability or the facts alleged therein, but for the purpose of securing certain obligations under the settlement agreement, in the amount of Five Hundred Thousand Dollars (\$500,000.00) and agree to act and perform pursuant to certain other specified terms and conditions in the settlement agreement.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that, by virtue of the findings hereinabove set forth, the Motion to Approve Settlement Agreement should be and is hereby granted and that judgment is hereby entered in favor of the Plaintiffs and against the Defendants, William J. Collier, III and Morgan Hines & Associates, Inc., jointly and severally, in the amount of Five

Hundred Thousand Dollars (\$500,000.00), plus interest thereon from the date of judgment at the rate of 8.04% per annum pursuant to 28 U.S.C. § 1961, with each party to pay its own costs and attorney fees.

DATED this 8th day of December, 1988.

(Signed) H. Dale Cook

HONORABLE H. DALE COOK
Chief Judge, United States
District Court for the
Northern District of Oklahoma

APPROVED AS TO FORM:

GABLE & GOTWALS

By: 

Robert S. Glass


- and -

James D. Hurley
Counsel for Plaintiffs

COMFORT, LIPE & GREEN

By: 

James E. Green, Jr.,
Counsel for Defendants,
William J. Collier, III and
Morgan Hines & Associates, Inc.


William J. Collier, III
Defendant

MORGAN HINES & ASSOCIATES, INC.

By: 

William J. Collier, III,
President

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 15 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

MAKO, INC.,

Plaintiff,

vs.

CIRCLE K CONVENIENCE STORES,
INC.,

Defendant.

Case No. 87-C-490-E

SETTLEMENT ORDER

NOW on this 15th day of December, 1988, the Court does hereby enter the following Settlement Order which has been agreed to by all the parties to this action. The Court, being advised that the parties to this action have settled their differences and have agreed to the following settlement, does hereby order as follows:

1. CIRCLE K shall be paid the sum of \$325,000.00 from the escrow account presently being held by Utica National Bank and Trust Company, on Friday, December 16, 1988, and MAKO, INC.

2. The balance of the escrow account presently being held by Utica National Bank and Trust Company, after CIRCLE K has been paid the amounts designated in Paragraph 1 above and \$13,000.00 has been withheld to pay the amounts designated in Paragraph 7 below, and Utica National Bank and Trust Company has been paid the sum of \$1,066.85 for its attorney's fees, shall be paid to MAKO, INC. on December 16, 1988.

3. The real property which is the subject of this action shall be delivered to MAKO, INC. by CIRCLE K at a time agreed to by the undersigned attorneys on Wednesday, December 21, 1988

4. CIRCLE K will remove the sign facings only from its signs located on the property which is the subject of this action.

5. CIRCLE K shall warrant and represent to MAKO, INC. that it has placed no encumbrances on the property during the period of time it has had possession of the property.

6. CIRCLE K will remove all inventories, except gasoline, located in the convenience store located on the property which is the subject of this action.

7. MAKO, INC. will purchase from CIRCLE K all gasoline inventories held by CIRCLE K at the time of Closing at CIRCLE K's cost, with "cost" being defined as the actual price CIRCLE K paid for the gasoline inventories including all taxes and transportation charges. The purchase price for the gasoline shall also be paid to CIRCLE K on Wednesday, December 21, 1988, from the \$13,000.00 which is being held in accordance with Paragraph 2 above.


8. All of the actions required herein will be performed simultaneously at a Closing at a time to be agreed to by the attorneys for the parties, which Closing shall be on Wednesday, December 21, 1988. Closing shall not occur, however, until the Settlement Agreement is approved by the Bankruptcy Court of the Eastern District of Oklahoma.

9. CIRCLE K shall agree to delete the property, which is the subject of this action, from the non-compete agreement which is presently in full force and effect between the parties.

10. MAKO, INC. will pay to the present first mortgage holder all amounts necessary to bring the First Mortgage current.

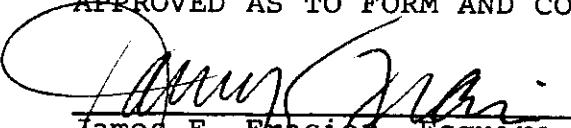
11. Prior to Closing, the gasoline tanks located on the property which is the subject of this action shall be tested, at MAKO, INC.'s cost, for leaks. The testing shall be performed by the same testing company that tested the tanks at the time CIRCLE K took possession of the property.

12. The above terms of the settlement agreement are hereby approved by the Court and shall resolve all disputes involved in this action between the undersigned parties, and this action shall be dismissed with prejudice upon the performance of the above obligations.




JUDGE OF THE UNITED STATES
DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

APPROVED AS TO FORM AND CONTENT:



James E. Frasier, Esquire
Law Firm of Frasier & Frasier
Attorneys for Plaintiff



Joseph A. McCormick, Esquire
McCormick, Andrew & Clark
Attorneys for Defendant

FILED
DEC 15 1983
Jack C. Silver, Clerk
S. DISTRICT COURT

No. 87-CR-45-E
88-C-297-E

Jack C. Silver, Clerk
U.S. DISTRICT COURT

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

FILED

LESLIE NICHOLAS,

Plaintiff,

vs.

CHARLES A. ROBINSON; and
FARMERS INSURANCE COMPANY, INC.
A Kansas Corporation,

Defendants.


NO: 88-C-562-B

DEC 15 1988
Jack C. [unclear]
U.S. DISTRICT COURT

ORDER

NOW ON THIS 15th day of Dec., 1988,
plaintiff's Application for Dismissal with Prejudice came on for
hearing. The Court being fully advised in the premises finds
that said Application should be sustained and the defendants,
Charles A. Robinson and Farmers Insurance Company, Inc., should
be dismissed from the above entitled action with prejudice.

IT IS THEREFORE, ORDERED, ADJUDGED and DECREED that
plaintiff's Application for Dismissal with Prejudice be sustained
and the above captioned action be dismissed with prejudice as to
defendants, Charles A. Robinson and Farmers Insurance Company,
Inc.


HONORABLE THOMAS R. BRETT,
United States District Court
Judge for the Northern District

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

CHARLES ALFRED DAVIS,)
)
Petitioner,)
)
v.)
)
TED WALLMAN, and ATTORNEY)
GENERAL ROBERT HENRY,)
)
Respondents.)

87-C-957-E

FILED
DEC 19 1988
JAMES O. ELLISON
CLERK OF COURT


ORDER

The court has for consideration the Revised Findings and Recommendations of the Magistrate filed November 18, 1988, in which the Magistrate recommended that petitioner's application for a writ of habeas corpus be denied. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the court has concluded that the Revised Findings and Recommendations of the Magistrate should be and hereby are affirmed.

It is therefore Ordered that petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. §2254 is denied.

Dated this 13th day of December, 1988.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DARRYL K. PEARSON,

Plaintiff,

vs.

NIAGARA MACHINE & TOOL WORKS,
a Foreign Corporation, et al.,

Defendants,

OWENS-ILLINOIS INCORPORATED
GLASS CONTAINER DIVISION,
a Foreign Corporation,

Third Party Plaintiff,

vs.

CONTINENTAL CAN COMPANY, INC.,
a Foreign Corporation, and
PETER KIEWIT SONS', INC.,
a Foreign Corporation,

Third Party Defendants.)

FILED

DEC 14 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT
No. 88-C-71-B

ORDER OF DISMISSAL

NOW on this 14 day of Dec, 1988, upon the written application of the Plaintiff, Darryl K. Pearson, and the Defendant, E. Porter Essley Corporation, for a Dismissal With Prejudice of the Plaintiff's Complaint against the Defendant, E. Porter Essley Corporation, only, in the case of Pearson v. Niagara, et al., and all causes of action therein, the court having examined said Application finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint against said Defendant,

and have requested the court to dismiss said Complaint with prejudice as to Defendant E. Porter Essley Corporation, only, to any future action. The court being fully advised in the premises finds that said settlement is in the best interest of the Plaintiff, and that said Complaint against E. Porter Essley Corporation, only, should be dismissed pursuant to said Application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the court that all causes of action of the Plaintiff, Darryl K. Pearson, against the Defendant, E. Porter Essley Corporation, only, be and the same hereby are dismissed with prejudice to any future action.

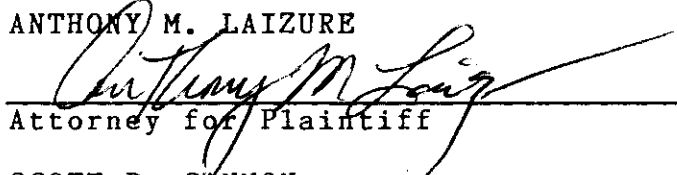
IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiff be allowed to proceed against the remaining Defendants involved herein.

C. H. HARRIS, JR., CLERK

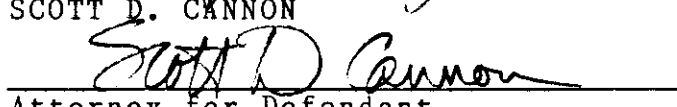
JUDGE OF THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF
OKLAHOMA

APPROVALS:

ANTHONY M. LAIZURE


Attorney for Plaintiff

SCOTT D. CANNON


Attorney for Defendant

18441/tlr
IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 14 1988

LAIRMORE ARABIANS, INC.; and
JUDITH ANN LAIRMORE,

Plaintiffs,

vs.

MARLENE J. ROSE; DAVID
SINCLAIR; and MARGUERITE JOYCE
SINCLAIR, individually and
doing business as GUARANTEED,
LTD., a partnership,

Defendants.

No. 88 C 365 B

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL WITH PREJUDICE

NOW, on this 14th day of December, 1988,
this matter comes on before the undersigned Judge of the United
States District Court upon joint application of the parties for
Dismissal With Prejudice of all claims and counterclaims.

THE COURT FINDS that the parties have resolved all issues
between themselves and there remain no issues to be litigated in
this matter.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this
action, the Complaint and Counterclaim, should be and same are
hereby dismissed with prejudice.

IT IS SO ORDERED.

S/ THOMAS R. BRETT

THOMAS R. BRETT
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ROBERT E. SCHUTTE,
Plaintiff,
v.
PHYLLIS MESSINA, FRANK
MESSINA, and BEN PERCY,
Defendants.

86-C-789-C ✓

FILED

DEC 13 1988 *mw*

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

On April 19, 1988, a status conference was held before Magistrate John Leo Wagner. The plaintiff, Robert E. Schutte, was neither present nor represented by counsel. The Magistrate recommended that this action be dismissed without prejudice for lack of prosecution.

On May 12, 1988, a final pretrial hearing was held, and again the plaintiff failed to appear.

On November 15, 1988, defendant, Frank Messina, filed a request for a hearing before Magistrate Wagner regarding plaintiff's failure to prosecute. Although on November 21, 1988, the plaintiff was granted until December 2, 1988 to respond to such request for hearing, no response has been filed and no extension has been sought by plaintiff.

It is therefore Ordered that this action is dismissed without prejudice for failure of plaintiff, Robert E. Schutte, to prosecute.

Dated this 12 day of December, 1988.

H. Dale Cook
H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

BOOKER T. X. SHEPHARD,
Plaintiff,
v.
RITA ANDREWS, et al,
Defendants.

88-C-470-B ✓

FILED

DEC 13 1988

ORDER

Jack C. Silver, Clerk
U.S. DISTRICT COURT

Now before the Court is defendants' Motion to Dismiss this action for failure to state a claim. Having reviewed the pleadings, special report of the factual basis of plaintiff's claims, and applicable law, the Court finds as follows.

Plaintiff, an inmate at Conner Correctional Center, claims that defendants have violated his civil rights under 42 U.S.C. §1983. Plaintiff alleges he has been denied the right to exercise his religious beliefs, because he received misconduct reports for failing to follow grooming restrictions placed on inmates. Plaintiff also alleges he has been deprived of liberty, because he was placed in restricted housing for refusing to follow the restrictions.

The Court finds that the Oklahoma Department of Corrections has established a grooming code policy pertaining to prison inmates. Prison Regulation #OP-070309, effective on 11/18/87, states that: "An inmate grooming code shall be maintained, as it affects the sanitary conditions of the living quarters and the safety, health, and welfare of the inmates." Regulation #CCC-070309-01, effective on 12/3/87, sets out the inmate grooming

code at Conner Correctional Center and includes in part the following provisions:

Beards and goatees are prohibited and shall not be authorized. Moustaches are allowed; however, moustaches shall not extend over the upper lip or the corners of the mouth.

The grooming, shaving, or cutting of hair, which results in a change in the inmate's appearance, will require the inmate to have a new identification picture made.

All inmates must comply with the minimum standards as outlined. If an inmate claims that compliance with the standards significantly infringes upon the exercise of his religion, he will be required to apply for an exemption to the inmate grooming code, as outlined in CCC-070309-02, entitled 'Application and Review Procedures for Exemption to the Conner Correctional Center Inmate Grooming Code' unless he has already received an exemption pursuant to this.

Inmates, who refuse to complete an Application for Exemption within the time frame specified, will automatically waive their rights to appeal for an exemption.

Regulation #CCC-070309-02, effective on 12/3/87, sets out the procedure for application for an exemption to the grooming code at Conner:

Inmates incarcerated at Conner Correctional Center have the opportunity to apply for an exemption to CCC-070309-01, entitled 'Inmate Grooming Code' on grounds that is [sic] significantly infringes upon the exercise of the [sic] their religion. All new converts to any religion shall be responsible for filing application for exemption in accord with this policy[.] [F]ailure to file application for exemption shall result in automatic waiver to the right of appeal.

All inmates must comply with the minimum standards as outlined in CCC-070309-01 upon reception, if the inmate claims that compliance with CCC-070309-01 would significantly infringe upon his exercise of his religion, or is detrimental to his health, he will be required to complete Attachment A or A.1

entitled 'Application for Exemption to CCC-070309-01 entitled, "Inmate Grooming Code"['] prior to going to his assigned unit. Authorized exemptions from other facilities will be honored if the sending facility's criteria outlined in Section II. C. 1-3 [sic].

Inmates who refuse to complete an Application for Exemption automatically waives [sic] their right to appeal for an exemption.

* * *

The Chaplain will be responsible to research and investigate the information contained on Page One of Attachment A and attempt to establish the following:

1. Is the religion a recognized religion?
2. Is there evidence to prove the inmate is an adherent to the religion?
3. Is there sufficient evidence as to how the practice of his religion is significantly inhibited by CCC-070309-01 entitled, 'Inmate Grooming Code'?

The Court finds that the documents included in the special report of the factual basis of plaintiff's claims show that plaintiff received several misconduct reports from prison officials for failure to comply with the grooming code requirement that his facial hair be shaved. He refused to file for an exemption to the grooming code until he had received several offense reports and disciplinary segregation for the offenses. When he finally submitted a request for exemption based upon his Islamic religion, the chaplain investigating the request denied it based on information received from the leader of the Islamic faith that beards were not required. Plaintiff did not appeal the decision.

Inmates do not lose all their constitutional protections by reason of their conviction and confinement. Bell v. Wolfish, 441 U.S. 520, 545, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979). Inmates clearly retain their First Amendment protections, including their right to freely exercise their religion. O'Lone v. Estate of Shabazz, 482 U.S. ___, 107 S.Ct. 2400, 96 L.Ed.2d 282 (1987). However, the lawful incarceration of the inmate brings about the necessary withdrawal or limitation of many privileges and rights as justified by the underlying considerations of the penal system. Price v. Johnston, 334 U.S. 266, 285, 68 S.Ct. 1049, 92 L.Ed. 1356 (1948). Further, the judgments concerning the regulation of inmate behavior as determined by the prison administration are entitled to a great deal of judicial deference. Pell v. Procunier, 417 U.S. 817, 827, 94 S.Ct. 2800, 41 L.Ed.2d 495 (1974).

In O'Lone, supra, the Court examined a prison regulation that prevented certain Muslim inmates from attending a Friday afternoon worship service that was of central importance to their religion. The court recognized that there was no alternative provided to the inmates who could not attend this service. However, the judges found that there was no constitutional violation, because the regulation could be justified by concerns for institutional order and security, the Muslim prisoners had the ability to participate in other religious observances of their faith, and accommodation of the asserted right would have

had adverse effects on other prisoners, prison personnel, and resources. O'Lone, supra at 291-292.

The Court finds that plaintiff has shown no violation of his constitutional right to exercise his religion, because the regulations pertaining to grooming, and in particular to facial hair, are justified by concerns for the sanitary conditions of the prison and the health and welfare of prisoners, plaintiff has the opportunity to observe his religion in other ways¹, and accommodation of the right he asserts would have adverse effects on sanitation and health conditions at the prison.

The Court finds in addition that plaintiff has shown no violation of his liberty right that occurred when he was placed in restrictive housing for failure to comply with the grooming guidelines. The Oklahoma prison officials have broad authority over the institutions they manage and may segregate prisoners, transfer them, and assign them a custodial status to protect them and other inmates. The Supreme Court in Hewitt v. Helms, 459 U.S. 460, 467-68, 103 S.Ct. 864, 74 L.Ed.2d 675 (1983), stated:

We have repeatedly said both that prison officials have broad administrative and discretionary authority over the institutions they manage and that lawfully incarcerated persons retain only a narrow range of protected liberty interests....

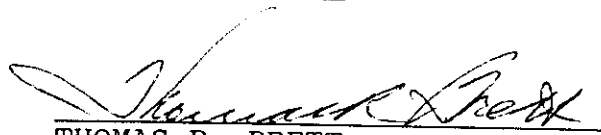
In Twyman v. Crisp, 584 F.2d 352, 356 (10th Cir. 1978), the court said "By Oklahoma statute the Director of Corrections is

¹ The Court notes that the chaplain who investigated plaintiff's request for an exemption to the grooming code found that plaintiff's religion does not require uncut hair.

vested with broad discretionary powers to manage the prison system. Specifically, he is empowered to transfer prisoners from one institution to another ... and to prescribe rules for the conduct and management of each institution, including rules for the demeanor of prisoners and the punishment of recalcitrant prisoners." (Citations omitted.)

In order to establish a cause of action under §1983, plaintiff must allege that defendants deprived him of a federally protected right and that the persons depriving him of that right acted under color of state law. Gomez v. Toledo, 446 U.S. 635, 640, 100 S.Ct. 1920, 1923, 64 L.Ed.2d 572 (1980). The Court finds that the plaintiff has alleged no violation of his constitutional rights. Defendants' Motion to Dismiss should be and therefore is granted.

Dated this 13 day of December, 1988.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 13 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT


AUSTIN WALKER,
Plaintiff,
vs.
PHIL ELIAS, et al.,
Defendants.

No. 88-C-284-E

ORDER

NOW on this 12th day of December, 1988 comes on for hearing the above styled case and the Court, being fully advised in the premises finds that all issues having been properly resolved in this case, including the filing of an Amended Report and Recommendation by Magistrate Wolfe which renders moot the objection to the previous Report and Recommendation and this Court adopting such Amended Report and Recommendation, this case should be and is hereby closed.

ORDERED this 12th day of December, 1988.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

STEWART CREMER and MAXINE CREMER,

Plaintiffs,

-vs-

VELSICOL CHEMICAL CORPORATION,

Defendant.

NO. 88-C-529-C

FILED

DEC 13 1988

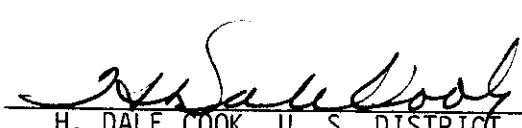
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL

The Motion for Order of Dismissal With Prejudice of plaintiffs, Stewart Cremer and Maxine Cremer, and of defendant, Velsicol Chemical Corporation, came before this court ^{NOTE} ~~for hearing~~ on Dec 12, 1988.

After reviewing the file and hearing the stipulation of counsel for plaintiffs and defendant, that captioned cause between the parties has been resolved through compromise settlement, the court finds that captioned cause should be dismissed with prejudice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the captioned cause be dismissed with prejudice.


H. DALE COOK, U. S. DISTRICT JUDGE

FILED

DEC 13 1988

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JAMES C. SILVER, CLERK
U.S. DISTRICT COURT

ASSOCIATES NATIONAL MORTGAGE
CORPORATION,

Plaintiff,

vs.

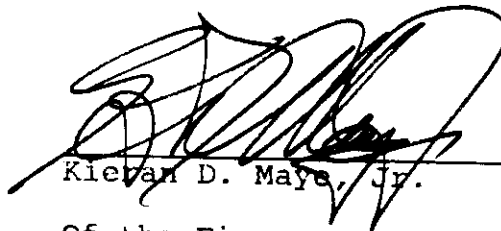
FIRST SECURITY MORTGAGE COMPANY,

Defendant.

Case No. 88-C-1338C

NOTICE OF DISMISSAL

The Plaintiff, Associates National Mortgage Corporation ("ANMC"), pursuant to Rule 41(a)(1)(i), hereby dismisses the above captioned action with prejudice to future filing.



Kieran D. Maye, Jr.

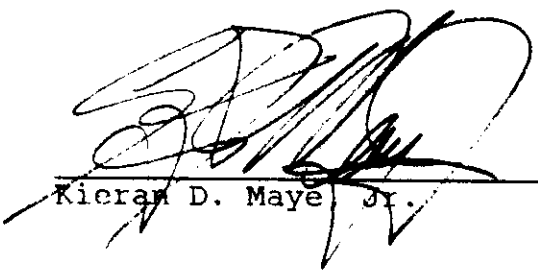
Of the Firm:
HASTIE AND KIRSCHNER
3000 First Oklahoma Tower
210 West Park Avenue
Oklahoma City, Oklahoma 73102
(405) 239-6404

Attorneys for the Plaintiff,
Associates National Mortgage
Corporation

CERTIFICATE OF SERVICE

This is to certify that on the 2nd day of December, 1988, a true and correct copy of the above and foregoing instrument was mailed, postage prepaid, to the following:

Benjamin P. Abney, Esquire
John P. Stafira, Esquire
Chapel, Wilkinson, Riggs
& Abney
502 West Sixth Street
Tulsa, Oklahoma 74119



Kieran D. Maye Jr.

FILED

DEC 13 1983

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk
U.S. DISTRICT COURT

LANA MASSA,

Plaintiff,

vs.

TUFTS, INC.,

Defendant.

)
)
)
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)
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Case No. 88-C-350-E

ORDER

Upon the parties' Joint Stipulation of Dismissal, the Court dismisses this action with prejudice. Each party is to bear its own costs.

/s/ JAMES C. HEDON

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

DEC 13 1988

PAULINE BLEVINS,

Plaintiff,

vs.

UNITED STATES OF AMERICA,
et al.,

Defendants.

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

Civil Action No. 87-C-1026-C

STIPULATION OF DISMISSAL WITH PREJUDICE

COMES NOW the plaintiff, Pauline Blevins, and the defendant, United States of America, and do hereby stipulate and agree that this action may be dismissed by the plaintiff with prejudice against the defendant, United States of America, its agents, servants, or employees, pursuant to Rule 41 of the Federal Rules of Civil Procedure.

Pauline Blevins
Pauline Blevins, Plaintiff

John M. Gerkin
John M. Gerkin,
Attorney for Plaintiff
P. O. Box 691
Jenks, Oklahoma 74037

United States of America

By *Nancy Nesbitt Blevins*
Nancy Nesbitt Blevins,
Assistant United States Attorney
3600 United States Courthouse
333 West 4th Street
Tulsa, Oklahoma 74103

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ROBERT E. COTNER,

Petitioner,

v.

TULSA COUNTY JUDGES HOPPER,
JENNINGS, DAULTON, TULSA
COUNTY D.A., and SHERIFF,
and THE ATTORNEY GENERAL
OF THE STATE OF OKLAHOMA,
et al,

Respondents.

88-C-1590-B ✓

FILED

DEC 18 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

Petitioner Robert E. Cotner's application for a writ of habeas corpus pursuant to 28 U.S.C. §2254 is now before the court for consideration. Petitioner alleges he was illegally arrested and incarcerated without probable cause. He does not give the nature of the offense, but states that judgment was entered against him on 11/7/88 in Case No. CRF-88-4539.

Title 28 U.S.C. §2254(b) and (c) provide:

(b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

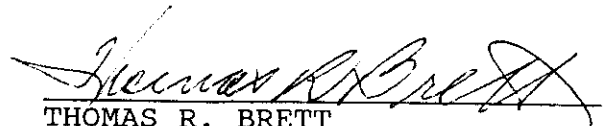
It appears that petitioner has not sought a direct appeal, nor has he availed himself of the post-conviction remedies

available under the Oklahoma Post-Conviction Procedures Act. 22 O.S. §§1080-1088. Petitioner cannot obtain federal review of his application for habeas corpus relief unless it appears that he has first exhausted his available state remedies.

Cotner claims that extraordinary circumstances exist which make it impossible for him to first exhaust his state remedies. An exception to the exhaustion rule will only be made if there is no opportunity in state court to obtain redress, or if the state corrective process is so clearly deficient as to render futile any attempt to obtain relief thereunder. Duckworth v. Serrano, 454 U.S. 1, 102 S.Ct. 18, 70 L.Ed.2d 1 (1981).

As petitioner has shown no set of circumstances which would entitle him to an exception from the exhaustion rule, it is ordered that petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. §2254 be and hereby is dismissed.

Dated this 13 day of December, 1988.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 13 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CIGNA PROPERTY & CASUALTY
COMPANIES, a Pennsylvania
corporation,

Plaintiff,

vs.

Case No. 88-C-224-B

YOCAM BROTHERS CONSTRUCTION,
INC., an Oklahoma corporation,

Defendant,

Third-Party Plaintiff,

vs.

AMERICAN CASUALTY COMPANY OF
READING, PENNSYLVANIA,

Third-Party Defendant.)

JOURNAL ENTRY OF JUDGMENT

On the 18th day of November, 1988, this Court entered its Order sustaining the Motion for Summary Judgment filed by CIGNA Property & Casualty Companies ("CIGNA") on its claim against the Defendant, Yocham Brothers Construction, Inc. Pursuant to the Order entered in this Court based upon the evidence presented, the admissions of Yocham's counsel, and the state of the record at the time of the hearing, the Court finds that judgment should be entered in favor of CIGNA as against Yocham on CIGNA's claim.

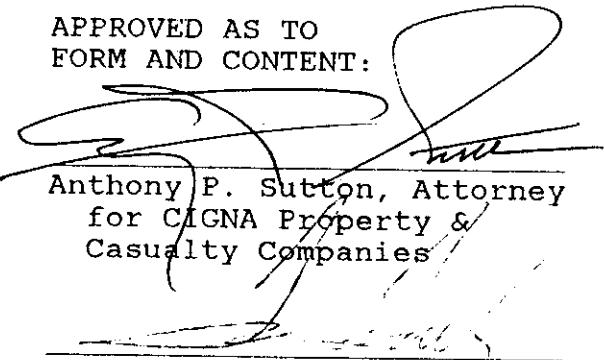
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, CIGNA Property & Casualty Companies, have judgment against the Defendant, Yocham Brothers Construction, Inc., and said Defendant is liable and obligated to said Plaintiff in the total sum of \$30,086.41 plus pre and post-judgment interest at the highest rate allowed by law.


WHEREFORE, let execution be had in favor of Plaintiff,
CIGNA Property & Casualty Companies and against Defendant, Yocham
Brothers Construction, Inc.

IT IS SO ORDERED, ADJUDGED AND DECREED this 13th day of
November, 1988.


JUDGE OF THE DISTRICT COURT

APPROVED AS TO
FORM AND CONTENT:


Anthony P. Sutton, Attorney
for CIGNA Property &
Casualty Companies


Tom Filbeck, Attorney for
Yocham Brothers
Construction, Inc.

10/cigna.jej t/lj

JHP/kgh

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DEC 12 1988
JACK C. SILVER, CLERK
U.S. DISTRICT COURT

JORJA L. DENTON and
DARRELL D. DENTON,
husband and wife,

Plaintiffs,

vs.

VIVIAN LEA OLIVER,

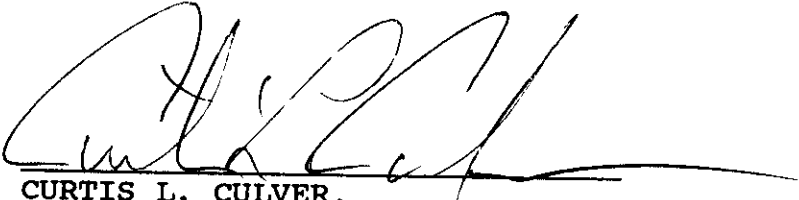
Defendant.

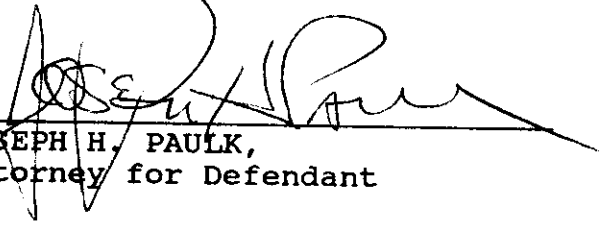
No. 88-C-405 E

STIPULATION OF DISMISSAL WITH PREJUDICE

Come now the parties to the above-entitled action and do hereby agree to this Stipulation of Dismissal With Prejudice in this matter. The parties herein agree to incur all respective costs and fees associated with this action.

WHEREFORE, premises considered, all parties do hereby agree to this Stipulation of Dismissal With Prejudice in the above-entitled action.


CURTIS L. CULVER,
Attorney for Plaintiffs


JOSEPH H. PAULK,
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

F I L E D

DEC 12 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

R. O. WHEELER, BETTY WHEELER
WEBSTER-JACKSON CORP., a
corporation, and OAK LEAF,
an Oklahoma limited partnership,

Appellants,

vs.

R. DOBIE LANGENKAMP,
Successor Trustee of REPUBLIC
FINANCIAL CORPORATION and
FIRST OKLAHOMA SAVINGS BANK,
F.A., Attorney-in-Fact for
R. DOBIE LANGENKAMP, Successor
Trustee of REPUBLIC FINANCIAL
CORPORATION and REPUBLIC TRUST &
SAVINGS COMPANY,

Appellees.

Bky. Case No. 84-01460-W
(Chapter 11)

Dist. Ct. No. 88-C-275-B

O R D E R

This matter comes before the Court upon Appellants, R.O. Wheeler, Betty Wheeler, Webster-Jackson Corp., and Oak Leaf's appeal from an Order entered on March 10, 1988, in the Bankruptcy Court for the Northern District of Oklahoma. The Bankruptcy Court held that the Appellants' application to amend their Answer in a state court foreclosure proceeding to reflect a setoff violated the automatic stay provisions of 11 U.S.C. §362. The Appellants were further ordered not to file or assert any other setoff, counterclaim, or the like against the Plaintiff in the foreclosure action, First Oklahoma Savings Bank ("FOSB"), Appellee herein. This appeal addresses whether the Bankruptcy Court erred in granting the Successor Trustee's Motion for Enforcement of the Automatic Stay and whether the Appellants' assertion of a setoff

against FOSB could be characterized as a recoupment.

First Oklahoma Savings Bank, as collection agent for R. Dobie Langenkamp, the Successor Trustee ("Trustee") of Republic Financial Corporation ("Republic"), filed two mortgage foreclosure actions on November 11, 1986, and August 3, 1987 in the District Court for Tulsa County, Oklahoma, against the Appellants. In response to the consolidated foreclosure actions, the Appellants filed answers denying liability based upon a parol agreement between Wes McKinney of Republic and Defendant-Appellant R.O. Wheeler.

From 1975 until 1980, the Appellants borrowed substantial sums of money from Republic through direct dealings with McKinney. These loans were secured by property located at 91st Street and Memorial ("Memorial property") and the Wheeler's personal residence, both located in Tulsa, Oklahoma. By September 1981, McKinney had repeatedly asked R.O. Wheeler to sell the Memorial property to Roger Hardesty ("Hardesty") for \$1.5 million. All communications and negotiations for the sale of the Memorial property were conducted between R.O. Wheeler and Wes McKinney, who was acting on Hardesty's behalf. R.O. Wheeler refused the offers because they were substantially below the property's market value of \$4.5 million and would pay only a fraction of Wheeler's \$4 million debt on the property. McKinney allegedly then stated to Wheeler that he would release Wheeler from all debt and mortgages on the unsold portions of the Memorial property and the personal residence if Wheeler sold parts of the Memorial property to Hardesty for \$1.5 million. In January 1982, Wheeler agreed to the

McKinney/Hardesty offer. By March 1982, McKinney and Republic began managing the Memorial property sold to Hardesty, although the sale did not close until October 1982.

Prior to the closing of the sale to Hardesty in October 1982, McKinney and Charles Wray, a Republic officer, allegedly promised the lien releases would be forthcoming; however, there would be some delay in delivering the releases because government auditors were inspecting Republic's financial records and McKinney needed the assets to appear in Republic's financial records. Additionally, Appellants allege that McKinney explained he would need the Appellants to execute renewal documents until he could provide the releases, although the Appellants would not be obligated to pay on the promissory notes. Based upon these oral representations, the Appellants did not pay the promissory notes.

First Oklahoma Savings Bank, as collecting agent for Republic, initiated foreclosure actions in state court to collect upon the delinquent promissory notes. The Appellants asserted the oral agreements as a defense to the foreclosure action. FOSB filed a Motion for Summary Judgment in the state court action alleging the oral agreements were unenforceable. On January 20, 1988, Appellants filed their Application to Amend their Answer in state court to include the defense of setoff against Republic for \$4.5 million. The Trustee subsequently filed in Bankruptcy Court a Motion to Enforce the Automatic Stay pursuant to 11 U.S.C. §362, asserting the Appellants could not claim a setoff in the state court litigation without leave of the Bankruptcy Court. On March

10, 1988, the Bankruptcy Court sustained the Trustee's motion to enforce the automatic stay and it is that Order from which the Appellants appeal.

The Appellants' basis for appeal is that their setoff should be properly characterized as a recoupment and not subject to the automatic stay provisions of the Bankruptcy Code.¹ The Appellants could then raise the defense of recoupment without leave of the Bankruptcy Court. The underlying issue is who determines whether a defense should be characterized as a setoff or recoupment. A setoff is based on mutual debts, which need not arise from the same transaction. See 11 U.S.C. §553. A recoupment claim arises from the same transaction from which the plaintiff's cause of action arose. "The fact that the same two parties are involved, and that a similar subject matter gave rise to both claims, however, does not mean that the two arose from the same transaction." Lee v. Schweiker, 739 F.2d 879, 875 (3rd Cir. 1984). The right, defense or counter-claim for recoupment requires that the defendant's claim grow out of the identical transaction that furnishes the plaintiff's cause of action. In re Heafitz, 85 B.R. 274 (Bkrtcy. S.D.N.Y. 1988). This Court does not need to address whether this case involves a single or multiple transactions because both defenses are subject to the automatic stay provisions.

The Code plainly states that the automatic stay prohibits all

¹The Appellants argue that recoupment is a refinement of the common law term set-off and is not subject to the automatic stay provisions.

actions to recover pre-petition claims. 11 U.S.C. §362(a)(6). The Bankruptcy Code and its legislative history are silent with regard to recoupment. Jurisdictions are split as to whether to allow the holder of a plausible claim for recoupment to proceed without court authorization; however, most jurisdictions hold that leave from the Bankruptcy Court is required before asserting a setoff or recoupment. In re Heafitz, 85 B.R. 274 (Bkrtcy. S.D.N.Y. 1988). The Heafitz court concluded that "although the exact wording of §362(a) does not refer to recoupment per se, they should nonetheless be subject to the automatic stay just as are setoffs. Id. at 280. See also, In re Klingberg Schools, 68 B.R. 173, 178 (N.D. Ill. 1986), *aff'd*, 837 F.2d 763 (7th Cir. 1988); Advanced Professional Home Health Care, Inc. v. Blue Cross & Blue Shield, 82 B.R. 837, 840 (Bkrtcy. E.D. Mich. 1988); In re Memorial Hospital of Iowa County, Inc., 82 B.R. 478, 480 n.2 (Bkrtcy. W.D. Wisc. 1988).

In B & L Oil Co. v. Ashland Petroleum Co., 782 F.2d 155 (10th Cir. 1986), the Court of Appeals allowed Ashland recoupment which involved post-petition recoveries of pre-petition overpayments under an ongoing oil division order. The Court allowed the recoupment because Ashland first brought an action in the bankruptcy court, asking for a declaration of recoupment. B & L Oil at 156. The Appellants never sought leave from the Bankruptcy Court. Therefore, the Trustee attempted to prevent the Appellants' setoff assertions in state court by seeking to enforce the automatic stay.

This Court concludes that recoupment is subject to the automatic stay provisions of 11 U.S.C. §362. Therefore, absent leave from the Bankruptcy Court, neither setoff nor recoupment may be asserted in state court after a bankruptcy petition has been filed. The Bankruptcy Court noted that this action was part of the fundamental core proceeding which should be addressed before the Bankruptcy Court to insure the orderly administration of the bankrupt estate. (Transcript of the Hearing to Enforce the Automatic Stay, pp. 12-13). Allowing each creditor with a colorable counterclaim to assert the claim as recoupment, and thereby litigate the merits of the claim outside the core proceedings, would encourage piecemeal litigation and undermine the orderly administration of the bankrupt estate. Therefore, the characterization of the Wheeler/Hardesty/McKinney agreements as a single or multiple transactions should be presented to the Bankruptcy Court.

The Bankruptcy Judge's Order sustaining the Trustee's Motion to Enforce the Automatic Stay is AFFIRMED.

IT IS SO ORDERED, this th12 day of December, 1988.

A handwritten signature in cursive script, appearing to read "Thomas R. Brett", written over a horizontal line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

DEC 19 1983

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

Defendants.

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CIVIL ACTION, ✓
FILE NUMBER 88-C1517B

THE PARTIES THEREFORE STIPULATE that all claims and counterclaims of all parties herein, arising out of the transactions or occurrences made the subject matter of this action, should be and hereby are forever dismissed with prejudice to the refiling of same in this or any other court, tribunal or forum.

Agreed and approved
as to form and substance:

PARKER DRILLING COMPANY OF
SOUTH AMERICA, INC.

By: R. M. McKenzie
Name: Ronnie R. McKenzie
Title: President

NEO ENERGY, INC.

By: R. Suttill
Name: RONALD SUTTILL
Title: Vice President

AVIVA PETROLEUM INC.

By: R. Suttill
Ronald Suttill,
Executive Vice President

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC -9 1988

JACK D. OLIVER, CLERK
U.S. DISTRICT COURT

HENRY RAY SANTIN,

Plaintiff,

v.

BARON V. WHATELEY, D.D.S.,
MAX D. BIRD, D.D.S.,
Individuals, and ST. PAUL FIRE
AND MARINE INSURANCE COMPANY,
a Foreign Insurance Company,

Defendants.

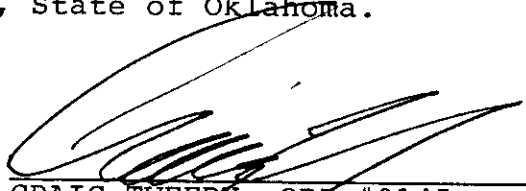
No. 88-C-1042-B

NOTICE OF DISMISSAL OF THIRD CLAIM
WITHOUT PREJUDICE

Comes now plaintiff, Henry Ray Santin, with his notice of his dismissal, without prejudice, pursuant to Rule 41 (a)(1), Federal Rules of Civil Procedure of the third claim for conspiracy against defendants, Baron V. Whateley, D.D.S., and St. Paul Fire and Marine Insurance Company, which third claim was added on or about July 27, 1988 as the Fourth Amendment to Petition (now Complaint), with further notice that plaintiff retains for trial the first two damage claims against defendant Whateley and defendant Max D. Bird, D.D.S.

Plaintiff further states that no answer or motion for summary judgment to the third claim has been filed and that defendants have filed their motion to dismiss for failure of the third claim to state a cause of action but without affidavits in support, and that the plaintiff is entitled, pursuant to Rule 41(a)(1), to this dismissal without an order to the Court.

Plaintiff further advises that counsel for defendants Whateley and St. Paul Fire and Marine Insurance Company has been given prior notice of this Notice of Dismissal, along with the request for a stipulation for an order sustaining the plaintiff's September 5, 1988 Motion to Remand to the District Court of Tulsa County, State of Oklahoma.



CRAIG TWEEDY OBA #9145
202 Wells Building
Sapulpa, OK 74066
(918) 224-2222

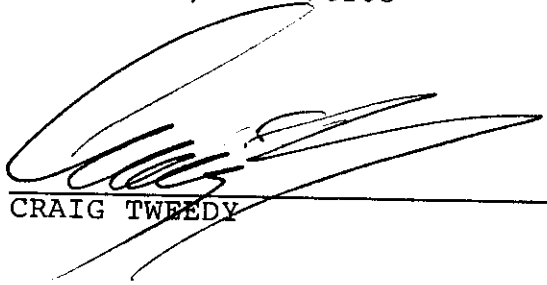
ATTORNEY FOR PLAINTIFF

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above foregoing instrument was deposited in the United States Mail, with proper postage thereon fully prepaid, on this 9th day of December 1988, and addressed to:

John R. Paul, Esq.
Phil R. Richards, Esq.
Richards, Paul, Richards &
Siegel
Nine East 4th St. Suite 400
Tulsa, OK 74103

Jack Thomas, Esq.
1500 Park Centre
525 South Main
Tulsa, OK 74103


CRAIG TWEEDY

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 9 1988

WILMA LAIDLEY, et al.,

Plaintiffs,

vs.

LANTZ McCLAIN, et al.,

Defendants.

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No. 87-C-418-E

Jessie L. Sawyer, Clerk
U.S. DISTRICT COURT


O R D E R

The Court has for consideration the Report and Recommendation of the Magistrate filed August 5, 1988. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby are adopted by the Court. The Court does, however, decline to adopt or address the Magistrate's recommendations with regard to Defendants' good faith immunity from suit and immunity under the Eleventh Amendment, as such issues are rendered moot by the rulings on other issues.

IT IS THEREFORE ORDERED that the motion for summary judgment of Defendants Creek County Board of Commissioners Lantz McClain and Ted Ritter should be and are hereby granted, the motion of Defendant Wesley Rucker to dismiss is moot as Defendant Rucker has been dismissed from the action, Plaintiff's pendant state law claims are hereby dismissed as they cannot be heard by this Court as a result of the granting of summary judgment as to the federal

causes of action and plaintiff's motion for leave to file amended complaint is moot in light of this Court's granting of summary judgment to all Defendants.

ORDERED this 9th day of December, 1988.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 9 1988

CHRISTOPHER E. LONGSTRETH,

Plaintiff,

vs.

CITY OF TULSA, OKLAHOMA,
et al.,

Defendants.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

No. 88-C-346-E

O R D E R

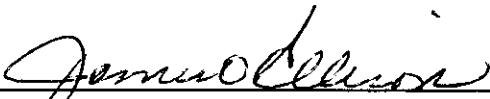
There being no response to the motion to dismiss of Defendant Sheriff Frank Thurman and more than ten (10) days having passed since the filing of the motion to dismiss and no extension of time having been sought by Plaintiff Longstreth, the Court, pursuant to Local Rule 15(a), as amended effective May 1, 1988, concludes that Plaintiff Longstreth has therefore waived any objection or opposition to the motion to dismiss. See Woods Constr. Co. v. Atlas Chemical Indus. Inc., 337 F.2d 888, 890 (10th Cir. 1964).

Although Plaintiff has similarly failed to respond to the motion of summary judgment of Defendants Brockman and City of Tulsa even after an extension of time was granted for such response until November 28, 1988, this Court has carefully examined the merits of Defendants' motion for summary judgment. The Court finds that the uncontested facts established by evidence presented to the Court by Defendants Brockman and City of Tulsa and the authorities discussed in Defendants' Brief in Support are sufficient to and do demonstrate that summary judgment may appropriately be granted in

this case.

IT IS THEREFORE ORDERED that the motion to dismiss filed by Defendant Sheriff Frank Thurman and the motion for summary judgment filed by Defendants Brockman and City of Tulsa should be and are hereby granted. Defendants are given ten (10) days to submit an appropriate order of judgment to the Court for its approval.

DATED this 9th day of December, 1988.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DAVIS PAINT COMPANY,

Plaintiff,

vs.

JOE W. GREEN, et al.,

Defendants,

vs.

CHARLES BUCKMAN,

Third Party Plaintiff,

vs.

LYNN MILLER,

Third Party Defendant.

No. 87-C-880-E

FILED

DEC 9 1988


Jack C. Silver, Clerk
U.S. DISTRICT COURT

JUDGMENT

This action came on for consideration before the Court, Honorable O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS THEREFORE ORDERED that the Plaintiff Davis Paint Company take nothing from the Defendant Charles Buckman, that the action be dismissed on the merits, and that the Defendant Charles Buckman recover of the Plaintiff Davis Paint Company his costs of action.

ORDERED this 8th day of December, 1988.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
DEC -9 1998

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

MICHAEL MERRICK,

Plaintiff,

vs.

No. 87-C-290-C ✓

NORTHERN NATURAL GAS COMPANY,
a division of
Enron Corporation; and
LINDA ROBERTS,

Defendants.

JUDGMENT

This matter came before the Court by motion of Enron Corporation for summary judgment; and motion of Michael Merrick for summary judgment on the counterclaim filed by defendant Linda Roberts. The Court having considered the issues and having rendered a decision as contained in the Order filed simultaneously herein,

BH

IT IS ORDERED AND ADJUDGED that defendant Enron Corporation recover over and against plaintiff Michael Merrick on the claims contained in his complaint.

IT IS FURTHER ORDERED AND ADJUDGED that plaintiff Michael Merrick recover over and against defendant Linda Roberts on her claim for intentional infliction of emotional distress.

IT IS SO ORDERED this 8th day of December, 1988.



H. DALE COOK

Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DEC -9 1988

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

JACKIE HOWARD PARRET,

Plaintiff,

vs.

JACK COWLEY,

Defendant.

No. 88-C-68-C

ORDER

Before the Court is the objection to the Report and Recommendation of the Magistrate filed by the plaintiff, Jackie Parret.

The Magistrate recommends that the respondent's motion to dismiss be granted for failure of the plaintiff to exhaust state remedies. After a review of the state court record, the Magistrate determined that the state appellate court applied a procedural bar to plaintiff's appeal from denial of post-conviction relief and therefore did not consider the merits of plaintiff's claims.

The Court has independently reviewed the state court record and agrees with the Magistrate that plaintiff has procedurally been precluded from state appellate review of his claim.

Following the standards set in Brasier v. Douglas, 815 F.2d 64 (10th Cir. 1987) plaintiff's federal habeas claim is also

subject to dismissal because of procedural default in state court.

It is therefore the Order of the Court that defendant's motion to dismiss is hereby GRANTED.

The Court affirms the Report and Recommendation of the Magistrate and adopts it as the Findings and Conclusions of this Court.

IT IS SO ORDERED this 8 day of December, 1988.


H. DALE COOK

Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC -9 1988

DENNIS N. ALDEN,

Plaintiff,

vs.

APPLE LINES, INC.,
a corporation,

Defendant.

No. 88-C-425-B

JACOB SILVER, CLERK
U.S. DISTRICT COURT

O R D E R

Before the Court for decision is Defendant's Motion to Dismiss for lack of subject matter jurisdiction, lack of *in personam* jurisdiction, failure to state a claim, and in the alternative to transfer venue.

The Plaintiff by a recent Amended Complaint cured any subject matter jurisdiction by appropriate allegations to establish diversity jurisdiction. For the reasons stated below it is concluded this court lacks *in personam* jurisdiction over the Defendant, Apple Lines, Inc., so it is unnecessary to address the other motion to dismiss ground or alternative request.

In personam jurisdiction having been challenged, Plaintiff has the burden of establishing the nonresident defendant has the necessary minimum contacts with the forum that maintenance of the suit "does not offend traditional notions of fair play and substantial justice." Ten Mile Industrial Park v. Western Plains Service Corp., 810 F.2d 1518, 1524 (10th Cir. 1987); International Shoe Company v. Washington, 326 U.S. 310, 90 L.Ed. 95 (1945);

Hanson v. Denckla, 357 U.S. 235, 2 L.Ed.2d 1283 (1958).

The law of the forum state governs the federal court's exercise of jurisdiction over the person which, in Oklahoma, must be consistent with federal and state constitutional standards. Rambo v. American Southern Insurance Co., 839 F.2d 1415, 1416 (10th Cir. 1988); 12 Okla.Stat. §2004(F).

Pertinent allegations of the Plaintiff's Amended Complaint state:

"That the Defendant has availed itself with the privileges of conducting business activities within this form (sic) and has invoked the benefits and protection of Oklahoma laws by operating as a common carrier throughout the United States, including Oklahoma. That therefore, this Court has personal jurisdiction over the parties based upon the clear existence of minimum contacts."

Once a 12(b)(2) motion has been filed with supporting affidavits, a plaintiff must respond with counter-affidavits or appropriate proofs to establish the necessary contact with the forum to support *in personam* jurisdiction. Stranahan Gear Co. v. NL Industries, Inc., 800 F.2d 53, 58 (3rd Cir. 1986).

The record before the Court establishes the following concerning the contact of the Defendant, Apple Lines, Inc. ("Apple"), with the State of Oklahoma. Apple is incorporated pursuant to the laws of the State of Nebraska and has its principal place of business in South Dakota. Apple is a common carrier trucking company which operates throughout the continental United States. Apple maintains terminals in Madison, South Dakota and

Hammond, Indiana. Apple owns and operates approximately 175 trucks. Apple's trucks are operated by drivers employed by Core Services, Inc. ("Core"). Core drivers are employed only by Apple. Apple also employs drivers who own and operate their own trucks.

In November 1987 the Plaintiff, Dennis Alden ("Alden"), applied to Core for a job. At the time Alden resided in the State of Texas and Core provided Alden with transportation to South Dakota where Alden underwent tests. He passed the tests and completed a formal application in South Dakota on November 7, 1988 (sic). Alden was employed in South Dakota and was assigned an Apple Lines vehicle that he proceeded to operate in many different states. On January 8 or 9th, 1988, while Alden was operating an Apple Lines truck bound for Chicago, he communicated with the Defendant's Hammond, Indiana terminal from Joliet, Illinois that for certain reasons he could not continue the trip. (Although not relevant to the *in personam* jurisdiction issue, the Defendant files two employee affidavits stating that Plaintiff 'phoned the Defendant Hammond terminal stating that he had a vision from God that ill would befall him if he continued to the Chicago destination. In the response brief of Plaintiff it is alleged, though not supported by affidavit, that he could not continue the trip to Chicago because of company demands that he violate ICC driving requirements and that he was simply physically too tired to complete the haul). On January 9, 1988 Plaintiff returned to

the Hammond, Indiana terminal and then traveled to his home in Texas ceasing employment with Core and/or Apple.

In an affidavit supplied by an employee of Apple it is stated that in 1981 the Interstate Commerce Commission issued to Apple Permit No. 114632 which authorized Apple to operate as a common carrier in interstate commerce throughout the continental United States. This permit superseded all earlier ICC permits. Pursuant to federal regulations, Defendant filed the ICC permit in 1981 with the Oklahoma Corporation Commission. The filing was accomplished under number 22776. Defendant is not authorized by the State of Oklahoma to conduct business as an intrastate common carrier. There is no evidence in the record that Apple does any business of any kind in the State of Oklahoma but one might imply, although there is no direct evidence in support, that an Apple truck might occasionally pass through the State of Oklahoma while in interstate commerce. The only involvement with the State of Oklahoma is the fact that the Plaintiff moved to Osage County, Oklahoma, allegedly establishing his domicile there following his return to his residence in Texas after ceasing employment with the Defendant. The mere fact that Apple's purported conduct may have caused economic consequences in Oklahoma is not sufficient grounds for the exercise of personal jurisdiction. Rittenhouse v. Mabry, 832 F.2d 1380, 1384 (5th Cir. 1987); Westphal v. Mace, 671 F.Supp. 665, 668 (D. Ariz. 1987); and Dunnigan v. Silverthorn, 542 F.Supp. 32, 33 (E.D.Pa. 1982).

In Behagen v. Amateur Basketball Association of the United States, 744 F.2d 731, 733 (10th Cir. 1984), *cert. denied*, 471 U.S. 1010, 105 S.Ct. 1879, 85 L.Ed.2d 171 (1985), the Court stated:

"The plaintiff bears the burden of establishing personal jurisdiction over the defendant. Prior to trial, however, when a motion to dismiss for lack of jurisdiction is decided on the basis of affidavits and other written materials, the plaintiff need only make a *prima facie* showing. The allegations in the complaint must be taken as true to the extent they are uncontroverted by the defendant's affidavits. If the parties present conflicting affidavits, all factual disputes are resolved in plaintiff's favor, and the plaintiff's *prima facie* showing is sufficient notwithstanding the contrary presentation of the moving party."

In the instant matter Plaintiff has produced no affidavits or written materials in opposition to those submitted by the Defendant.

Jurisdiction over corporations may be either general or specific. Rambo, *supra*, 839 F.2d at 1418. Jurisdiction over a defendant in a case arising out of or related to the defendant's contacts with the forum state is "specific jurisdiction." When the case does not arise from or relate to the defendant's contacts with the forum and jurisdiction is based on the defendant's presence or accumulated contacts with the forum, the court exercises "general jurisdiction." *See, Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 n. 15, 105 S.Ct. 2174, 2182 n. 15, 85 L.Ed.2d 528 (1985); Helicopteros Nacionales de Colombia S.A. v. Hall, 466 U.S. 408, 414 nn. 8 and 9, 104 S.Ct. 1868, 1872 nn. 8 and 9, 80 L.Ed.2d 404

(1984); Bearry v. Beech Aircraft Corp., 818 F.2d 370, 374 (5th Cir. 1987).

In personam jurisdiction herein must be based upon general jurisdiction and not specific jurisdiction because no activity of the Plaintiff concerning his employment and termination by Defendant occurred in the State of Oklahoma. Plaintiff resided in Texas at the time of his employment by Defendant which actually occurred in the State of South Dakota, Defendant's principal place of business. Plaintiff operated out of Defendant's terminals in South Dakota and Indiana and actually drove the Defendant's truck through many states. Plaintiff was in the State of Illinois at the time the events occurred resulting in his termination in Hammond, Indiana. Plaintiff returned to the State of Texas where he filed his unemployment compensation claim and then subsequently moved to Osage County, Oklahoma.

The threshold question is whether, pursuant to federal regulations, Defendant's filing of the ICC permit in 1981 with the Oklahoma Corporation Commission is sufficient contact by the Defendant with the State of Oklahoma to subject it to *in personam* jurisdiction. The Court thinks not.

"[T]he constitutional touchstone remains whether the defendant purposefully established 'minimum contacts' in the forum State ...

This 'purposeful availment' requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of 'random', 'fortuitous,' or 'attenuated' contacts. [citations omitted], or of the 'unilateral activity of another party or a third person,' [citation omitted]. Jurisdiction is proper,


however, where the contacts proximately result from actions by the defendant himself that create a 'substantial connection' with the forum State."

Burger King Corp. v. Rudzewicz, *supra*, 471 U.S. at 474-75; *see also*, Asahi Metal Industry Co. v. Superior Court of California, ___ U.S. ___, 107 S.Ct. 1026, 1031, 94 L.Ed.2d 92 (1987); Fidelity and Casualty Co. of New York v. California Raisins Corp., 766 F.2d 440, 445-46 (10th Cir. 1985), *cert. denied*, 474 U.S. 1082, 106 S.Ct. 853, 88 L.Ed.2d 893 (1986); Helitzer v. Helitzer, 761 F.2d 582, 585-86 (10th Cir. 1985).

There is no evidence in the record concerning Defendant's continuous and systematic contacts with the State of Oklahoma. There is no evidence any of the Defendant's trucks have ever entered the State of Oklahoma, except by implication.

For the reasons stated the Court concludes that it is without *in personam* jurisdiction over the Defendant, Apple Lines, Inc., so Plaintiff's action in the Northern District of Oklahoma is dismissed.

IT IS SO ORDERED this 9th day of December, 1988.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC -9 1988

HARRY L. LACY, JR.,

Plaintiff,

vs.

CITGO PETROLEUM CORPORATION,
a Delaware corporation,

Defendant.

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

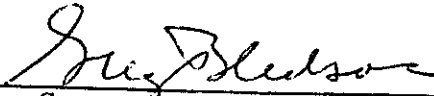
No. 86-C-1105-B

STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Fed.R.Civ.P. 41(a)(1), the parties hereto stipulate that Plaintiff shall dismiss with prejudice this matter.

WHEREFORE, the parties request the Court enter an Order of Dismissal with Prejudice and require each party to bear its respective attorney's fees and costs.

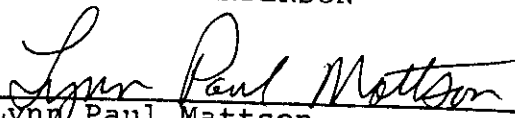
DATED this 8 day of December, 1988.


D. Gregory Bledsoe
1515 South Denver
Tulsa, Oklahoma 74119-3828

Attorney for Harry L. Lacy, Jr.

DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON

By:


Lynn Paul Mattson
Kathy R. Neal
1000 Atlas Life Building
Tulsa, Oklahoma 74103
(918) 582-1211

Attorneys for Citgo Petroleum
Corporation

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC -8 1988

D. LINN THOMASON and
MARY LEE THOMASON,

Plaintiffs,

vs.

Case No. 88-C-666-E

CIGNA INSURANCE COMPANY
(formerly Insurance Company
of North America),

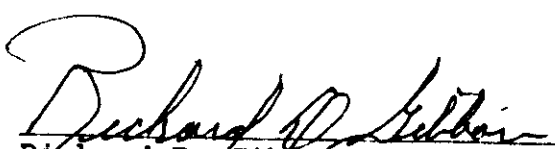
Defendant.)

JAMES C. ANDERSON, CLERK
U.S. DISTRICT COURT

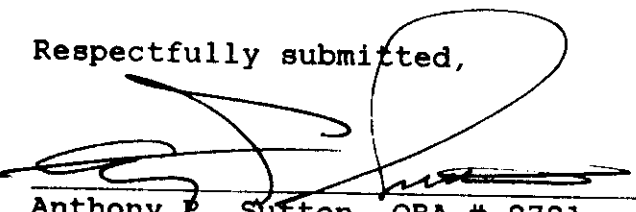
**JOINT NOTICE AND STIPULATION OF
DISMISSAL WITH PREJUDICE**

The Plaintiffs, D. Linn Thomason and Mary Lee Thomason ("Plaintiffs"), by and through their counsel of record, Richard D. Gibbon of Gibbon, Gladd & Associates, P.A., and the Defendant, CIGNA Insurance Company ("CIGNA"), by and through its counsel of record, Anthony P. Sutton of Feldman, Hall, Franden, Woodard & Farris, pursuant to Rule 41 (a)(1)(ii), Fed.R.Civ.P. hereby notify the Court of their stipulation that the above-styled matter be dismissed with prejudice, the parties having reached a compromise settlement of Plaintiffs' claims. Pursuant to said rule, a court order is not necessary to dismiss this case due to the stipulation of dismissal signed by the parties' respective counsel. The case, therefore, may be stricken from this Court's docket.

Respectfully submitted,


Richard D. Gibbon, OBA # 3340
Gibbon, Gladd & Associates, P.A.
1611 S. Harvard Avenue
Tulsa, OK 74112
(918) 745-0687

ATTORNEYS FOR PLAINTIFFS


Anthony P. Sutton, OBA # 8781
Feldman, Hall, Franden, Woodard
& Farris
525 S. Main, Suite 1400
Tulsa, OK 74103-4409
(918) 583-7129
ATTORNEYS FOR DEFENDANT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DANNY R. JACKSON,
Plaintiff,

vs.

EDWARD C. ALDRIDGE, JR.,
SECRETARY OF THE AIR FORCE,
Defendant.

No. 88-C-621-E ✓

FILED

DEC 8 1988 CB

Jack C. Silver, Clerk
U.S. DISTRICT COURT

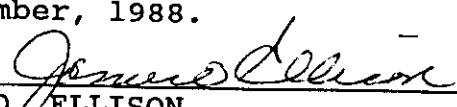
ORDER

There being no response to the Defendant Secretary of the Air Force's motion to dismiss and more than ten (10) days having passed since the filing of the motion to dismiss and no extension of time having been sought by Plaintiff Jackson, the Court, pursuant to Local Rule 15(a), as amended effective May 1, 1988, concludes that Plaintiff Jackson has therefore waived any objection or opposition to the motion to dismiss. See Woods Constr. Co. v. Atlas Chemical Indus. Inc., 337 F.2d 888, 890 (10th Cir. 1964). In addition, the Court has reviewed the merits of such motion and determined that such dismissal is proper.

The Defendant Secretary of the Air Force's motion to dismiss is therefore granted.

Defendant Secretary of the Air Force is given fifteen (15) days to submit an order of judgment to the Court for its approval.

ORDERED this 7th day of December, 1988.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JACK SCOTT, SR., and
CHLOE NELL SCOTT, husband and
wife, and PRO-MED, INC., an
Oklahoma corporation,

Plaintiffs,

vs.

THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA, a
New Jersey corporation, and
SOUTHWESTERN BELL CORPORATION
CUSTOMCARE MEDICAL PLAN,

Defendants.

No. 87-C-933-B ✓

87-C-962-B

DEC 8 1988

U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

J U D G M E N T

In accord with the Order filed this date sustaining the Defendants' Motion for Summary Judgment, the Court hereby enters judgment in favor of the Defendants, The Prudential Insurance Company and Southwestern Bell Corporation CustomCare Medical Plan, and against the Plaintiffs, Jack Scott Sr., Chloe Nell Scott, and Pro-Med, Inc. This Court determines the Defendants have no obligation to provide custodial home health care and the Plaintiffs shall take nothing on their claims. Costs are assessed against the Plaintiffs and each party shall be responsible for their own respective attorney's fees.

DATED this 8th day of December, 1988.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 8 1988

RANDY GAIL ROMBACH,
Plaintiff,

vs.

DR. ALEX LIZZARAGA, et al.,
Defendants.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

No. 88-C-1017-E

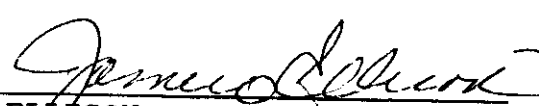
ORDER

There being no response to the Defendants' motion to dismiss and more than ten (10) days having passed since the filing of the motion to dismiss and no extension of time having been sought by Plaintiff Rombach, the Court, pursuant to Local Rule 15(a), as amended effective May 1, 1988, concludes that Plaintiff Rombach has therefore waived any objection or opposition to the motion to dismiss. See Woods Constr. Co. v. Atlas Chemical Indus. Inc., 337 F.2d 888, 890 (10th Cir. 1964).

The Defendant's motion to dismiss is therefore granted.

Defendants are given fifteen (15) days to submit an order of judgment to the Court for its approval.

ORDERED this 17th day of December, 1988.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

F I L E D

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DEC 8 1988

LEANN CHARON and FRANK CHARON

Plaintiffs,

v.

VINCENT COAK,

Defendant.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

No. 87-C-944-B

O R D E R

This matter comes before the Court upon Defendant Continental Western Insurance Company's ("Continental") Motion and Plaintiffs' Counter-Motion for Partial Summary Judgment. The Plaintiffs brought this action to recover from injuries sustained in an automobile accident. The Plaintiff Leann Charon seeks relief for the numerous personal injuries she incurred in that accident. Plaintiff Frank Charon seeks relief for the loss of consortium due to the injury of his wife, Leann Charon. At issue in these Motions is whether Frank Charon's claim for damages for loss of consortium resulting from bodily injury to his wife is subject to the \$25,000 "each person" limit or the \$50,000 "each accident" limit of the automobile liability insurance policy issued by Continental. For the reasons stated below, the Court concludes that Frank Charon's claim comes within the \$25,000 "each person" limitation.

The automobile insurance policy provides that Continental will pay damages for bodily injury or property damage for which any insured becomes legally responsible because of an auto accident. (Defendant's Exhibit A, page 2). Additionally, the policy defines

"bodily injury" as "bodily harm, sickness or disease, including death that results." (Defendant's Exhibit A, page 1). Finally, the policy provides

"The limit of liability shown in the declarations for each person for bodily injury liability is our maximum limit of liability for all damages, including damages for care, loss of services, or death, arising out of bodily injuries sustained by any one person in any one auto accident." (Emphasis added).

(Defendant's Exhibit A, page 3).

Plaintiff asserts the term "harm" is ambiguous and should encompass Frank Charon's claim for loss of consortium. Plaintiff's construction of "harm" must be rejected because the policy speaks of "bodily harm" as opposed to "harm" in general. Accepting Plaintiffs' construction that "bodily harm" encompasses loss of consortium would strain the ordinary meaning of "bodily harm" as encompassed within the definition of "bodily injury". Izzo v. Colonial Penn Ins. Co, 524 A.2d 641 (Conn. 1987)

"The term 'bodily injury' cannot be reasonably construed to incorporate loss of consortium. While it is true that loss of consortium is a separate and independent cause of action, that action is a derivative claim that arises only as a consequence of injuries to one's spouse. The fact that [plaintiff] has a separate cause of action for loss of consortium does not mean, as [plaintiff] asserts, that loss of consortium constitutes a 'bodily injury'.

McGovern v. Williams, 741 S.W.2d 373, 374 (Tex. 1987). See also, Campbell v. Farmers Ins. Co., 745 P.2d 160 (Ariz.App. 1987); Arguello v. State Farm Mutual Ins. Co., 599 P.2d 266, 267 (Colo. App. 1979); Lepic v. Iowa Mutual Ins. Co., 402 N.W.2d 758, 763-64

(Iowa 1987). Although Frank Charon may have an independent claim for loss of consortium, the policy specifically limits the amount of liability, including loss of services, to the "each person" damages limitation. Therefore, Frank Charon may pursue his claim, subject to the \$25,000 "each person" liability limitation.

It is therefore ORDERED that Defendant's Motion for Partial Summary Judgment be sustained and that Continental's liability be limited to \$25,000, for all of the Plaintiffs' claims.

IT IS SO ORDERED, this 8th day of December, 1988.

A handwritten signature in cursive script, appearing to read "Thomas R. Brett", is written over a horizontal line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FES/kb

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

F I L E D

DEC 8 1988

ALBERT J. LEDET, III,

Plaintiff,

vs.

REALVEST, INC., d/b/a
ASHWOOD APARTMENTS,

Defendant.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

Case No. 87-C-481-E

ORDER OF DISMISSAL

Upon the application of the plaintiff and for good
cause shown, this action is dismissed with prejudice.


UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DEC 8 1988

JACK SCOTT, SR., and
CHLOE NELL SCOTT, husband and
wife, and PRO-MED, INC., an
Oklahoma corporation,

Plaintiffs,

vs.

No. 87-C-933-B

THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA, a
New Jersey corporation, and
SOUTHWESTERN BELL CORPORATION
CUSTOMCARE MEDICAL PLAN,

Defendants.

J U D G M E N T

In accord with the Order filed this date sustaining the Defendants' Motion for Summary Judgment, the Court hereby enters judgment in favor of the Defendants, The Prudential Insurance Company and Southwestern Bell Corporation CustomCare Medical Plan, and against the Plaintiffs, Jack Scott Sr., Chloe Nell Scott, and Pro-Med, Inc. This Court determines the Defendants have no obligation to provide custodial home health care and the Plaintiffs shall take nothing on their claims. Costs are assessed against the Plaintiffs and each party shall be responsible for their own respective attorney's fees.

DATED this 8th day of December, 1988.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

✓
Cotro.

-v-

Hopper, et al

The U. S. Dist. Court
Northern Dist. of Cal.

No. ~~88-C-1590-B~~ - 88-C-1590-B

Notice of Withdrawal of
Habeas Corpus Petition

FILED

DEC 8 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

Notice, - to Clerk

Clerk, - please withdraw my Habeas Corpus petition
that I just had the ~~file~~ filing fee paid.

ALSO, -

I herewith state I do not need the papers form for the civil suit
at this time.

Please advise, as to both the above being withdrawn.

Thank you.

Sincerely,

Robert E. Cotro,
D-2-8 - County Jail.

note:

Jim Tronconi is my
attorney now.

PEITION FOR O.R. BOND FOR ROBERT E. COTNER

ROBERT E. COTNER is being held only because he can't hire an attorney or afford to post bond.
WE, THE FOLLOWING PEOPLE, ALL TAX-PAYERS, do hereby petition the court to allow ROBERT E. COTNER
A RELEASE ON O.R. BOND pending trial.

NAME

ADDRESS

DATE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FEDERAL DEPOSIT INSURANCE
CORPORATION, in its corporate
capacity,

Plaintiff,

vs.

R. A. SELLERS, III,

Defendant.

Case No. 88-C-0035-C ✓

FILED

DEC 8 - 1988 *fw*

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL

NOW comes on before this Court the Stipulation of Dismissal filed herein by plaintiff, Federal Deposit Insurance Corporation, acting in its corporate capacity ("FDIC/Corporate"), and defendant, R. A. Sellers, III, pursuant to Fed.R.Civ.P. 41(a)(1)(ii), and the Court having reviewed such Stipulation of Dismissal and good cause having been stated in support thereof, hereby ORDERS that the Complaint and Application for Order of Delivery of Property, commencing this proceeding and filed herein on January 15, 1988, be and the same is hereby dismissed without prejudice.

IT IS SO ORDERED and DATED this 7th day of December, 1988.

H. Dale Cook
HONORABLE H. DALE COOK,
CHIEF JUDGE, U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

APPROVED FOR ENTRY:

Robert S. Glass
Robert S. Glass (OBA No. 10824)
Gable & Gotwals, Inc.
Counsel for Plaintiff, FDIC/Corporate

Paul R. Thomas
Paul R. Thomas
Jarboe & Stoermer
Counsel for Defendant, R. A. Sellers, III

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC -7 1988

ROGER HIMSTREET and SHARON
HIMSTREET, formerly Husband and
Wife,

Plaintiffs,

vs.

CITY OF BARNSDALL, a munici-
pality within the State of
Oklahoma, THE BOARD OF COUNTY
COMMISSIONERS OF THE COUNTY OF
OSAGE; JESSE GARRETT, an
individual, and BILL WILLIAMS,
an individual,

Defendants.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

No. 88-C-225-B

ORDER

Before the Court for decision are the Motions to Dismiss Plaintiffs' Amended Complaint Pursuant to Fed.R.Civ.P. 12(b)(6) for failure to state a claim filed June 23, 1988 by Defendants Bill Williams and the Board of County Commissioners of Osage County. The Plaintiffs filed a Petition and Amended Petition in the state court previous to removal.

The Plaintiff, Roger Himstreet, in his Amended Complaint, alleges that he suffered a cardiovascular stroke on May 19, 1986 while driving an automobile in the City of Barnsdall, Oklahoma. An accident ensued and Plaintiff was wrongfully arrested for driving under the influence of intoxicants, placed in the Barnsdall jail, and denied proper medical treatment for an extended period. Plaintiff alleges violations under the Oklahoma Tort Claims Act,

51 Okla. Stat. §151 *et seq.* and federal constitutional violations under 42 U.S.C. §1983.

The Plaintiffs' Amended Complaint lacks allegations that Defendant Bill Williams or the Osage County Sheriff were involved in the initial arrest or custodial confinement of Roger Himstreet in the Barnsdall city jail. At best, Plaintiffs allege that at some point following Roger Himstreet's arrest and confinement, Defendants Bill Williams and the Osage County Sheriff's office "may" have had some involvement. The allegations of Plaintiffs are insufficient to allege a cause of action against these moving Defendants on either the Oklahoma tort claim or 42 U.S.C. §1983 theories. Further, it has been conceded that Sharon Himstreet, formerly the wife of Roger Himstreet, has no claim for loss of consortium.

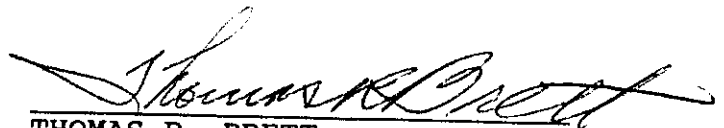
The Oklahoma Tort Claims Act (51 O.S. §151 *et seq.*) claim against Defendant Williams is further deficient because: 51 O.S. §163 provides for an employee exemption under the Act, when the employee is acting in the scope of the governmental subdivision's employment, and there are no allegations that complainant complied with or substantially complied with the administrative claims procedure of 51 Okla. Stat. §§156 and 157. Willbourn v. City of Tulsa, 721 P.2d 803, 805 (Okla. 1986).

Plaintiffs' claim against the County Commissioners of Osage County, Oklahoma is deficient in reference to the Oklahoma Tort Claims Act because of exemptions 4, 5, and 6 of 51 Okla.Stat. §155

and further, there are no allegations Plaintiffs complied with or substantially complied with the administrative claims procedure of 51 Okla.Stat. §§156 and 157. Willbourn v. City of Tulsa, 721 P.2d 803, 805 (Okla. 1986). Plaintiffs' claim pursuant to 42 U.S.C. §1983 against Osage County, Oklahoma is also deficient in that it lacks allegations of custom and policy violations as required by Monell v. New York City Department of Social Services, 463 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978).

The Motions to Dismiss of the Defendants Williams and the County Commissioners of Osage County, Oklahoma, are hereby sustained. Plaintiffs' alternative Motion to Amend is overruled as Plaintiffs' claim has been twice amended previously. The motion of said Defendants for sanctions pursuant to Rule 11, Fed.R.Civ.P. is hereby denied.

IT IS SO ORDERED this 17th day of December, 1988.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SHIRLEY MITCHELL,

Plaintiff,

vs.

JEANNE PARKS CHELSEA,
Individually and as Guardian
of ADA L. PARKS, Incompetent,

Defendant.

No. 88-C-971-C

FILED

DEC. 7 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

OF
STIPULATION FOR DISMISSAL WITH PREJUDICE

COME NOW Plaintiff and Defendant and stipulate to the
dismissal of the above-styled and numbered cause with prejudice to
any future action.

FRASIER & FRASIER

BY:

Steven R. Hickman
Steven R. Hickman, OBA #4172
1700 Southwest Boulevard
Suite 100
P. O. Box 799
Tulsa, OK 74101
918/584-4724

NICHOLS, WOLF, STAMPER, NALLY
& FALLIS

BY:

Diane C. Palumbo
Diane C. Palumbo
124 E. 4th Street
Suite 400
Tulsa, OK 74103
918/584-5182

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FLOYD D. BEELER and VERA I.
BEELER,

Plaintiffs,

v.

W.K. JOHNSON, an individual;
OFFERMAN & COMPANY, INC., a
Minnesota corporation; and
BROCK HOTEL CORPORATION, a
Delaware corporation,

Defendants.

Case No. 86-C-304-E

FILED

DEC 7 1988

ORDER

Jack C. Silver, Clerk
U.S. DISTRICT COURT

The above-entitled matter came before the Court on the motion of defendant Offerman & Company to enforce the settlement agreement.

Upon consideration of all the records, files and proceedings herein, including the Findings and Conclusions, which are incorporated herein:

IT IS HEREBY ORDERED that:

(1) The motion of Offerman & Company to enforce the settlement agreement is **GRANTED**.

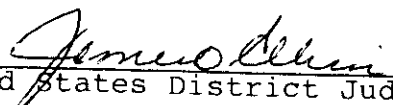
(2) Plaintiffs Floyd and Vera Beeler are ordered to meet with Richard B. Noulles, at the offices of Gable & Gotwals, Suite 2000, Fourth National Bank Building, Tulsa, Oklahoma 74119, at 3:00 p.m., Thursday, December 8, 1988, to assign and transfer the debentures to Offerman & Company, and to receive

the settlement amount, less the damages listed in paragraph 3, below, and to execute the settlement papers attached as Exhibit 1 to the Findings and Conclusions.

(3) Offerman & Company is awarded damages in the amount of \$6,135.00; Brock Hotel is awarded the damages of \$2,137.25; and W. K. Johnson is awarded the damages of \$875.00. The settlement amounts owed by each defendant is to be reduced by the respective amounts, as set forth in the Findings and Conclusions.

(4) As a result, Offerman's portion of the settlement is now \$26,865; Brock's portion of the settlement is now \$1,362.75; and W. K. Johnson's portion of the settlement is now \$2,625.00; for a total settlement amount of \$30,852.75.

Dated:


United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 7 1988

ROBERT E. COTNER,

Petitioner,

vs.

MACK ALFFORD, Warden, State
of Oklahoma,

Respondents.

Jack C. Silver, Clerk
U.S. DISTRICT COURT


No. 82-C-723-E

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed September 20, 1988. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby are adopted by the Court.

IT IS THEREFORE ORDERED that Petitioner's Petition for Writ of Habeas Corpus is denied.

ORDERED this 6th day of December, 1988.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC -7 1988

LARRY KILLION,

Plaintiff,

v.

UNUM LIFE INSURANCE COMPANY,
formerly known as UNIONMUTUAL
STOCK LIFE INSURANCE COMPANY
OF AMERICA,

Defendant.


No. 88-C-311-B

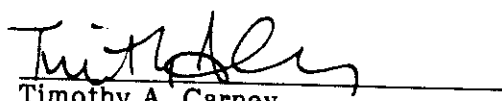
JACK C. SILVER, CLERK
U.S. DISTRICT COURT

STIPULATION FOR DISMISSAL WITH PREJUDICE

The parties to this action, Larry Killion and UNUM Life Insurance Company of America, hereby stipulate for dismissal of this action with prejudice, for the reason that the parties have settled their dispute. The parties are to bear their own respective attorney's fees and costs.


Larry Killion, Plaintiff


John A. Gladd
GIBBON, GLADD & ASSOCIATES
1611 South Harvard
Tulsa, Oklahoma 74112
Attorney for Plaintiff


Timothy A. Carney
GABLE & GOTWALS
2000 Fourth National Bank Building
Tulsa, Oklahoma 74119
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 8 1988

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

BOBBY J. TURNEY, JR.,
446568209

Defendant,

Jack C. Silver, Clerk
U. S. DISTRICT COURT

CIVIL NUMBER 88-C-615 B

DEFAULT JUDGMENT

A Default having been entered against the Defendant and counsel for the Plaintiff having requested Judgment against the defaulted Defendant and having filed a proper Affidavit, all in accordance with Rule 55(a) and (b)(1) of the Federal Rules of Civil Procedure and Rule 7 of the Rules of the District Court for the NORTHERN District of Oklahoma, now, therefore;

JUDGMENT is rendered in favor of the Plaintiff, United States of America, and against the Defendant, BOBBY J. TURNEY, JR., in the principal sum of \$622.38, plus pre-judgment interest and administrative costs, if any, as provided by Section 3115 of Title 38, United States Code, together with service of process costs of \$15.36. Future costs and interest at the legal rate of 8.55%, will accrue from the entry date of this judgment and continue until this judgment is fully satisfied.

DATED this 8th day of December, 1988.

U.S. DISTRICT COURT CLERK
NORTHERN DISTRICT OF OKLAHOMA

By:

H. Miller
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 6 1988

LANA MASSA,

Plaintiff,

vs.

TUFTS, INC.,

Defendant.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

No. 88-C-350-E

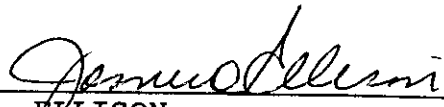
JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the action be dismissed without prejudice. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within twenty (20) days that settlement has not been completed and further litigations is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this judgment by United States mail upon the attorneys for the parties appearing in this action.

ORDERED this 5th day of December, 1988.


JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 6 1988

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ALLIED TUBE & CONDUIT CORP.,

Plaintiff,

vs.

OTASCO, INC.,

Defendant.


Case No. 88-C-536-B

ADMINISTRATIVE CLOSING ORDER

The Defendant having filed its petition in bankruptcy and these proceeding being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other prupose required to obtain a final determination of the litigation.

IF, within 60 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 6th day of DECEMBER, 1988.


UNITED STATES DISTRICT JUDGE
THOMAS R. BRETT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC -6 1988

STELLA F. MIX,

Plaintiff,

vs.

READING & BATES PETROLEUM COMPANY,

Defendant.

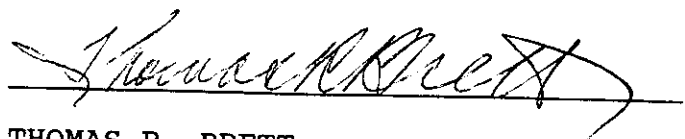
JACK D. SILVER, CLERK
U.S. DISTRICT COURT

No. 88-C-32-B

J U D G M E N T

In accord with the Order filed on this date sustaining the Defendant's Motion for Summary Judgment, the Court hereby enters Judgment in favor of the Defendant, Reading & Bates Petroleum and against the Plaintiff, Stella F. Mix. The Plaintiff shall take nothing on her claim. Costs are assessed against the Plaintiff and each party shall be responsible for their own respective attorney's fees.

IT IS SO ORDERED, this 6th day of December, 1988.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 6 1988

Jack C. Silver, Clerk
U. S. DISTRICT COURT

THURSTON FIRE & CASUALTY
INSURANCE COMPANY,

Plaintiff,

vs.

CRAWFORD & COMPANY, and
CORPORATE UNDERWRITERS AGENCY,
INC.,

Defendants.

Case No. 87-C-849-B


ADMINISTRATIVE CLOSING ORDER

Corporate Underwriters Agency, Inc.

The Defendant/ having filed its petition in bankruptcy and these proceeding being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other prupose required to obtain a final determination of the litigation.

IF, within 60 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 6th day of December, 1988.


UNITED STATES DISTRICT JUDGE
THOMAS R. BRETT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 5 1988
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ROY LEE DUNN,

Plaintiff,

v.

RON CHAMPION, Warden, et al,

Defendants.

88-C-98-B

ORDER

Now before the Court is plaintiff's civil rights complaint pursuant to 42 U.S.C. § 1983, filed March 23, 1988. Although the court file contains proof of service of summons and complaint in April of 1988 on defendants Charles L. Arnold, Ron Champion, Marvin D. Keenen, Henry A. Hutcherson, and Peter M. Iverson, none has entered an appearance in this case.

It having been nine months since the initiation of this lawsuit and plaintiff having taken no action during that time, it is ordered that this action is dismissed for failure of plaintiff to prosecute.

Dated this 5 day of December, 1988.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 5 1988

Jack C. Silver
U.S. DISTRICT COURT

SHOAN MARR,

Plaintiff,

v.

OTIS R. BOWEN, M.D.,
SECRETARY OF HEALTH AND
HUMAN SERVICES,

Defendant.

88-C-253-B

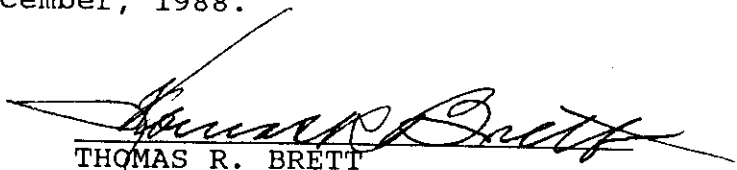
ORDER

The court has for consideration the Findings and Recommendations of the Magistrate filed November 8, 1988, in which the Magistrate recommended that this case be remanded to the Secretary. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed.

It is therefore Ordered that this case is remanded to the Secretary for consideration by a vocational expert to ascertain if an individual with plaintiff's type of pain, affective disorder, young age, and lack of training and work experience can maintain employment in any job that exists in the national economy.

Dated this 5 day of December, 1988.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 5 1988

KING BROWN, JR.,
Plaintiff,

vs.

OTIS R. BOWEN, M.D., Secretary)
of Health and Human Services,)
Defendant.)

No. 87-C-504-E

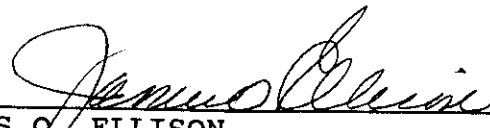
Jack C. Silver, Clerk
U.S. DISTRICT COURT

O R D E R

The Court has for consideration the Report and Recommendation of the Magistrate filed September 23, 1988. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby are adopted by the Court.

IT IS THEREFORE ORDERED that the decision of the Secretary of Health and Human Services should be and is hereby affirmed.

ORDERED this 24 day of December, 1988.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

Jack C. Silver, Clerk
U.S. DISTRICT COURT

No. 88-C-26-E

JAMES O. ELLISON-
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OKLAHOMA

CLERK'S OFFICE

UNITED STATES COURT HOUSE

TULSA, OKLAHOMA 74103

December 5, 1988 - 8

JACK C. SILVER
CLERK

(218) 2
(FTE) 7

TO: Counsel/Parties of Record

RE: Case # 88-C-1303-C

In re Stockton Oil/Gas Co.

This is to advise you that Chief Judge E. Dale Cook entered the following Minute Order this date in the above case:

The movant having failed to comply with Rule 8003(a) of the Bankruptcy Rules, the motion for leave to appeal is hereby denied.

Very truly yours,

JACK C. SILVER, CLERK

By: 
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

F I L E D

DEC 5 1988

RANDALL EUGENE WOOTEN,

Petitioner,

vs.

RON CHAMPION, Warden, et al.,

Respondents.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

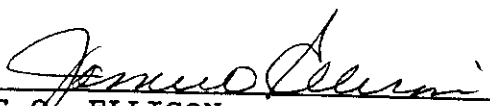
No. 87-C-1040-E

O R D E R

The Court has for consideration the Report and Recommendation of the Magistrate filed August 23, 1988. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby are adopted by the Court.

IT IS THEREFORE ORDERED that Petitioner's application for a writ of habeas corpus should be and is hereby denied.

ORDERED this 2^d day of December, 1988.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DEC 5 1988

CLINTON TRAVIS WILSON,

Plaintiff,

vs.

DAVID PILLARS, GARY BANKSTON,
JAMES DEAN and CHARLES CRAWFORD,

Defendants.

Jack C. Silver, Clerk
U. S. DISTRICT COURT

No. 88-C-464-B

ORDER OF DISMISSAL

NOW on this 5th day of December, 1988, upon the written application of the Plaintiff, Clinton Travis Wilson, and the Defendants, David Pillars, Gary Bankston, James Dean and Charles Crawford, for a Dismissal With Prejudice of the Complaint of Wilson v. Pillars, et al., and all causes of action therein, the court having examined said Application finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the court to dismiss said Complaint with prejudice to any future action. The court being fully advised in the premises finds that said settlement is in the best interest of the Plaintiff, and that said Complaint should be dismissed pursuant to said Application.

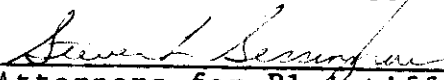
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the court that the Complaint and all causes of action of the Plaintiff, Clinton Travis Wilson, against the Defendants, David Pillars, Gary Bankston, James Dean and Charles Crawford, be and the same hereby are dismissed with prejudice to any future action.

S/ THOMAS R. BRETT

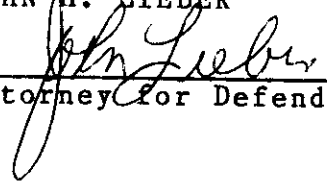
 JUDGE OF THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF
OKLAHOMA

APPROVALS:

STEVEN L. SESSINGHAUS


Attorneys for Plaintiff

JOHN H. LIEBER


Attorney for Defendants

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DEC 5 1988

Jack C. Silver, Clerk
U. S. DISTRICT COURT

WILLIAM M. ENDECOTT

Plaintiff,

vs.

BURLINGTON NORTHERN RAILROAD
COMPANY,

Defendant.

No. 88-C-1442-B

ORDER

Upon stipulation of the parties and for good cause shown, plaintiff's causes of action against the defendant, Burlington Northern Railroad Company, are hereby dismissed with prejudice to the refiling of such actions.

IT IS SO ORDERED this 5th day of December, 1988.

S/ THOMAS R. BRETT

THOMAS R. BRETT
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC - 5 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

MIDAMERICA FEDERAL SAVINGS AND LOAN
ASSOCIATION,

Plaintiff,

v.

No. 88-C-1344-B

SHERIDAN PROPERTIES, INC., a Tennessee
corporation; ROBERT J. PHILLIPS; WANDA N.
PHILLIPS; JUSTIN LYON; VIRGYL D. JOHNSON;
RAYMOND M. BRIGGS; ERWIN LEE KING; JAMES
O. SHOEMAKER; THOMAS C. HARMON; HELEN P.
BRIGGS; EILEEN L. KING; MELANIE SHOEMAKER;
DARVEN L. BROWN; FINIS W. SMITH; DAVID W.
GRAHAM; JOAN GRAHAM; METROPOLITAN FEDERAL
BANK, FSB, formerly doing business as
Metropolitan Federal Savings and Loan
Association; and TURNER CORPORATION OF
OKLAHOMA, INC.,

Defendants,

v.

GREEN COUNTRY APPRAISAL SERVICE, INC., an
Oklahoma corporation,

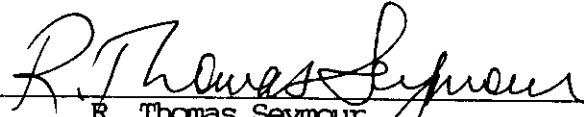
Third-Party Defendant.)

STIPULATION ~~FOR ORDER~~ OF DISMISSAL WITH PREJUDICE

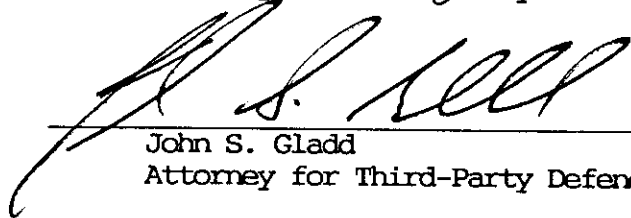
COMES NOW the Third-Party Plaintiff, Helen P. Briggs, and pursuant to Federal Rule of Civil Procedure 41(a)(1), hereby moves the Court for an Order Of Dismissal With Prejudice as to the Third-Party Defendant, Green County Appraisal Service, Inc., for its action brought by way of a Third-Party Petition filed in the District Court of Tulsa County, Case Number CJ-87-2589.



Helen P. Briggs
Third-Party Plaintiff



R. Thomas Seymour
Attorney for Third-Party Plaintiff



John S. Gladd
Attorney for Third-Party Defendant

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 5 1988

John C. Silver, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TERESA ANN COOK; COUNTY
TREASURER, Tulsa County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

CIVIL ACTION NO. 88-C-896-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 2 day
of December, 1988. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, Assistant United States Attorney;
the Defendants, County Treasurer, Tulsa County, Oklahoma, and
Board of County Commissioners, Tulsa County, Oklahoma, appear by
Doris L. Fransein, Assistant District Attorney, Tulsa County,
Oklahoma; and the Defendant, Teresa Ann Cook, appears not, but
makes default.

The Court being fully advised and having examined the
file herein finds that Defendant, Teresa Ann Cook, acknowledged
receipt of Summons and Complaint on August 29, 1988; that
Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged
receipt of Summons and Complaint on August 15, 1988; and that
Defendant, Board of County Commissioners, Tulsa County, Oklahoma,
acknowledged receipt of Summons and Complaint on August 12,
1988.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on September 1, 1988; and that the Defendant, Teresa Ann Cook, has failed to answer and her default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Two (2), Block One (1), SMITHVILLE ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on February 29, 1988, Teresa Ann Cook filed her voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 88-00486-C. On June 20, 1988, Teresa Ann Cook was discharged of all dischargeable debts.

The Court further finds that on May 14, 1987, the Defendant, Teresa Ann Cook, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, her mortgage note in the amount of \$30,000.00, payable in monthly installments, with interest thereon at the rate of nine percent (9%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Teresa Ann Cook, executed and delivered to the United States of America,

acting on behalf of the Administrator of Veterans Affairs, a mortgage dated May 14, 1987, covering the above-described property. Said mortgage was recorded on May 18, 1987, in Book 5023, Page 3188, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Teresa Ann Cook, made default under the terms of the aforesaid note and mortgage by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Teresa Ann Cook, is indebted to the Plaintiff in the principal sum of \$30,190.68, plus interest at the rate of 9 percent per annum from October 1, 1987 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against the Defendant, Teresa Ann Cook, in the principal sum of \$30,190.68, plus interest at the rate of 9 percent per annum from October 1, 1987 until judgment, plus interest thereafter at the current legal rate of 8.55 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

BY JAMES D. BISON

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



PHIL PINNELL
Assistant United States Attorney



DORIS L. FRANSEIN
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

PP/css

(

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES A. HULL; GRAND FEDERAL
SAVINGS BANK; COUNTY TREASURER,
Delaware County, Oklahoma; and
BOARD OF COUNTY COMMISSIONERS,
Delaware County, Oklahoma,

Defendants.

F I L E D

DEC 5 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 88-C-344-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 2 day
of Dec, 1988. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Peter Bernhardt, Assistant United States
Attorney; the Defendants, County Treasurer, Delaware County,
Oklahoma, and Board of County Commissioners, Delaware County,
Oklahoma, appear by Robert C. Jenkins, Assistant District
Attorney, Delaware County, Oklahoma; and the Defendants, James A.
Hull and Grand Federal Savings Bank, appear not, but make
default.

The Court being fully advised and having examined the
file herein finds that the Defendant, James A. Hull, was served
with Summons and Complaint on September 13, 1988; that the
Defendant, Grand Federal Savings Bank, acknowledged receipt of
Summons and Complaint on June 2, 1988; that Defendant, County
Treasurer, Delaware County, Oklahoma, acknowledged receipt of

Summons and Complaint on April 25, 1988; and that Defendant, Board of County Commissioners, Delaware County, Oklahoma, acknowledged receipt of Summons and Complaint on April 12, 1988.

It appears that the Defendants, County Treasurer, Delaware County, Oklahoma, and Board of County Commissioners, Delaware County, Oklahoma, filed their Answer herein on April 28, 1988; and that the Defendants, James A. Hull and Grand Federal Savings Bank, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Delaware County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot 201 and 202 Holiday Shores, a subdivision according to the recorded plat thereof Delaware County, State of Oklahoma.

The Court further finds that on January 9, 1984, the Defendant, James A. Hull, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, his mortgage note in the amount of \$41,500.00, payable in monthly installments, with interest thereon at the rate of twelve and one-half percent (12.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, James A. Hull, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated January 9, 1984, covering the above-described

property. Said mortgage was recorded on January 18, 1984, in Book 459, Page 533, in the records of Delaware County, Oklahoma.

The Court further finds that the Defendant, James A. Hull, made default under the terms of the aforesaid note and mortgage by reason of his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, James A. Hull, is indebted to the Plaintiff in the principal sum of \$40,794.37, plus interest at the rate of 12.5 percent per annum from July 1, 1987 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, County Treasurer and Board of County Commissioners, Delaware County, Oklahoma, have a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$18.94. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Grand Federal Savings Bank, is in default and has no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against Defendant, James A. Hull, in the principal sum of \$40,794.37, plus interest at the rate of 12.5 percent per annum from July 1, 1987 until judgment, plus interest thereafter at the current legal rate of 8.55 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be

advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Delaware County, Oklahoma, have and recover judgment in the amount of \$18.94, plus penalties and interest for personal property taxes.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Grand Federal Savings Bank, has no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, James A. Hull, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of Defendants, County Treasurer and Board of County Commissioners, Delaware County, Oklahoma, in the amount of \$18.94, personal property taxes which are currently due and owing.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

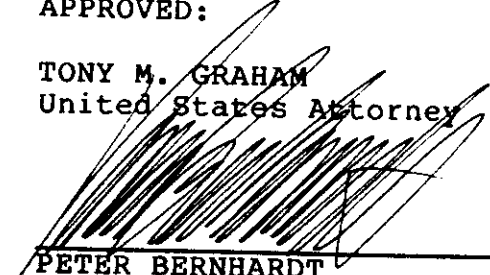
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ JAMES O. ELISON


UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



PETER BERNHARDT
Assistant United States Attorney



ROBERT C. JENKINS
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Delaware County, Oklahoma

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 5 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

DOROTHY LORINE EVANS, JOHNNY)
WILLIAM STOUT and NANCY ANNE)
EVANS STOUT, individuals,)
Plaintiffs,)

vs.)

Case No. 88-C0020 - 8

FEDERAL DEPOSIT INSURANCE)
CORPORATION, a corporation)
domesticated and doing)
business in the State of)
Oklahoma,)

Defendants.)

ORDER OF DISMISSAL ON MOTION OF PLAINTIFF

On this 2nd day of Dec, 1988, come the said
plaintiffs by their attorney, Charles Peters Seger, and thereupon
on motion, it is ordered by the court that this cause be and the
same is hereby dismissed at cost of plaintiffs, without prejudice
to their right to bring a new action in this behalf.

S/ JAMES O. ELLISON

United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

STELLA F. MIX,

Plaintiff,

vs.

READING & BATES PETROLEUM
COMPANY,

Defendant.

No. 88-C-32-B

DEC - 5 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

O R D E R

Before the Court for consideration is the Motion for Judgment Pursuant to Local Rule 15(a) of Defendant, Reading & Bates Petroleum Company. Being advised in the premises, and for the reasons set forth below, the Court finds that the Motion should be sustained.

On October 31, 1988, Defendant filed its Motion for Summary Judgment. Plaintiff's response thereto was due on or before November 15, 1988. As of this date, Plaintiff has failed to respond. Pursuant to Local Rule 15(a), Defendant's Motion for Summary Judgment is deemed confessed.

IT IS THEREFORE ORDERED that Defendant's Motion for Judgment Pursuant to Local Rule 15(a) is sustained. By operation of Local Rule 15(a), Defendant's Motion for Summary Judgment is deemed confessed. A separate judgment in accordance with this Order shall be entered.

DATED this 5 day of Dec., 1988.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILE

Jack C. Simon, Clerk
U. S. DISTRICT COURT

No. 83-CR-133-B

No. 88-C-1276-B

"[A]bsent the incompetence of counsel or some other exceptional circumstance, a defendant

will be bound by the decisions of his counsel. Mistakes of judgment on the part of counsel, or mistakes of tactics, strategy or policy in the course of a criminal trial do not constitute grounds for a later collateral attack pursuant to Section 2255."

United States v. Nolan, 571 F.2d 528, 534 (10th Cir. 1978), *citing* Frاند v. United States, 301 F.2d 102 (10th Cir. 1962).

This Court presided over the Defendant's trial and concludes that defense counsel's actions did not amount to incompetence or ineffective assistance. Therefore, the Defendant's Motion to vacate is denied.

IT IS SO ORDERED, this 5th day of December, 1988.

A handwritten signature in cursive script, reading "Thomas R. Brett", written over a horizontal line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DEC 2 1988

Jack C. Silver, Clerk
U. S. DISTRICT COURT

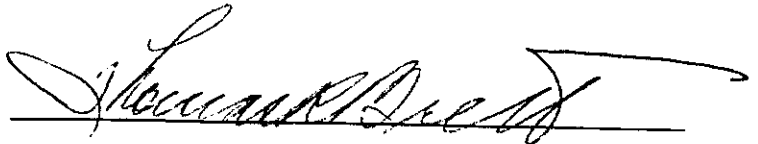
FARMERS INSURANCE COMPANY, INC.,)
)
Plaintiff,)
)
vs.)
)
HENRY WILKINS, BILLY MATT LOVE,)
and ARCO OIL AND GAS COMPANY,)
)
Defendants.)

No. 87-C-695-B

J U D G M E N T

In accord with the Order filed December 1, 1988, sustaining the Plaintiff's Motion for Summary Judgment, the Court hereby enters judgment in favor of the Plaintiff, Farmers Insurance Company, Inc., and against the Defendants, Henry Wilkins, Billy Matt Love, and Arco Oil & Gas Company. The Court finds the Plaintiff has no obligation to any of the Defendants arising from the insurance policy issued to Henry Wilkins. Each party is to pay its respective costs and attorney's fees.

DATED this 2nd day of December, 1988.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LONNIE D. HOWELL,

Plaintiff,

v.

CITY OF TULSA, OKLAHOMA, a
municipal corporation, POLICE
CHIEF R. N. DICK, POLICE
OFFICER H. L. BRAUER,

Defendants.

No. 88-C-95-B

FILED

DEC 2 1988

Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

This matter comes before the Court upon Plaintiff's Motion to Alter or Amend Judgment under Fed.R.Civ.P. 59(e). As set out in the Order of July 19, 1988, Defendants' Motion for Summary Judgment was filed on March 15, 1988. Plaintiff's memoranda in opposition to the motion was due on June 9, 1988, after receiving a sixty day extension from the initial due date. On June 9, 1988, Plaintiff was granted until June 24, 1988, in which to file the response to the motion. On July 19, 1988, this Court entered Summary Judgment in the Defendants' favor without the benefit of Plaintiff's response.

Plaintiff now requests this Court set aside the Order and Judgment and offers no excuse for its failure to respond.

"When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party."

Fed.R.Civ.P. 59(e). Upon the evidence presented, the Court found there was no basis to support Plaintiff's claim and entered judgment accordingly. The Court finds no justifiable reason to set aside the Order and Judgment. The motion is denied.

IT IS SO ORDERED, this 2nd day of December, 1988.

A handwritten signature in cursive script, appearing to read "Thomas R. Brett", written over a horizontal line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH B. GALLOWAY; COUNTY
TREASURER, Tulsa County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

FILED
IN OPEN COURT

DEC 2 - 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 88-C-339-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 2nd day
of December, 1988. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, Assistant United States Attorney;
the Defendants, County Treasurer, Tulsa County, Oklahoma, and
Board of County Commissioners, Tulsa County, Oklahoma, appear by
Doris L. Fransein, Assistant District Attorney, Tulsa County,
Oklahoma; and the Defendant, Joseph B. Galloway, appears not, but
makes default.

The Court being fully advised and having examined the
file herein finds that the Defendant, County Treasurer, Tulsa
County, Oklahoma, acknowledged receipt of Summons and Complaint
on April 12, 1988; and that the Defendant, Board of County
Commissioners, Tulsa County, Oklahoma, acknowledged receipt of
Summons and Complaint on April 12, 1988.

The Court further finds that the Defendant, Joseph B. Galloway, was served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning September 23, 1988, and continuing to October 28, 1988, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(C)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendant, Joseph B. Galloway, and service cannot be made upon said Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendant without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known address of the Defendant, Joseph B. Galloway. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Administrator of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the party served by publication with respect to his present or last

known place of residence and/or mailing address. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to the subject matter and the Defendant served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on May 2, 1988; and that the Defendant, Joseph B. Galloway, has failed to answer and his default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Fifteen (15), Block Nine (9), WINDSOR ESTATES, an Addition to the City of Broken Arrow, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on October 7, 1985, the Defendant, Joseph B. Galloway, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, his mortgage note in the amount of \$59,000.00, payable in monthly installments, with interest thereon at the rate of eleven and one-half percent (11.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Joseph B.

Galloway, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated October 7, 1985, covering the above-described property. Said mortgage was recorded on October 7, 1985, in Book 4897, Page 1292, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Joseph B. Galloway, made default under the terms of the aforesaid note and mortgage by reason of his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Joseph B. Galloway, is indebted to the Plaintiff in the principal sum of \$59,150.31, plus interest at the rate of 11.5 percent per annum from November 1, 1986 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against the Defendant, Joseph B. Galloway, in the principal sum of \$59,150.31, plus interest at the rate of 11.5 percent per annum from November 1, 1986 until judgment, plus interest thereafter at the current legal rate of 8.55 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure

action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff.


The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

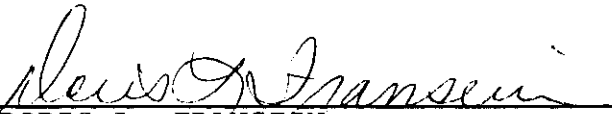

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



PHIL PINNELL
Assistant United States Attorney



DORIS L. FRANSEIN
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

PP/css

GF/MJK/kk

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC - 2 1988 *pw*

Jack C. Silver, Clerk
U.S. DISTRICT COURT

SECURITY-CONNECTICUT LIFE)
INSURANCE COMPANY,)

Plaintiff,)

vs.)

Case No. 88-C-881-*EW*

PAUL SISEMORE and JANET)
KAY DANIELS,)

Defendants.)


ST
STIPULATION FOR DISMISSAL

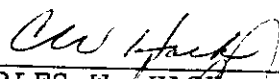
COMES NOW the Plaintiff, Security-Connecticut Life Insurance Company, by and through its attorney, Defendant Paul Sisemore, by and through his attorney, and Defendant Janet Kay Daniels, by and through her attorney, and state to the Court:

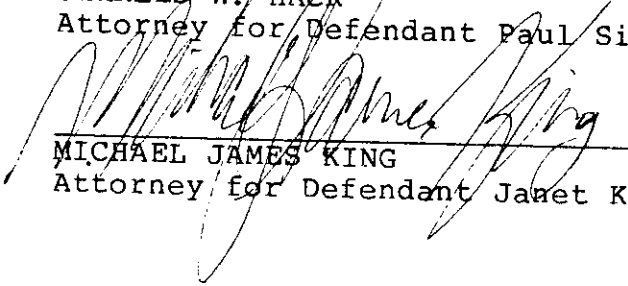
1. The above entitled cause has been fully settled, adjusted and compromised between the parties hereto.

2. By the terms of said compromise settlement, Defendant Janet Kay Daniels is to be paid One Hundred Thousand Dollars (\$100,000.00) from the sum deposited in Court by Plaintiff herein and Defendant Paul Sisemore is to be paid Seven Thousand Two Hundred Dollars (\$7,200.00) from said sum.

3. That each of the parties agree that the above entitled cause may be dismissed with prejudice.


STEPHEN C. WILKERSON
Attorney for Security-Connecticut
Life Insurance Company


CHARLES W. HACK
Attorney for Defendant Paul Sisemore


MICHAEL JAMES KING
Attorney for Defendant Janet Kay Daniels

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC -2 1988

UNITED STATES OF AMERICA,
Plaintiff,

vs.

TWO VEHICLES . . . ,

TWO PARCELS OF REAL PROPERTY
WITH BUILDINGS, APPURTENANCES,
AND IMPROVEMENTS, KNOWN AS
32 EASTRIDGE DRIVE, SANTA CRUZ,
CALIFORNIA,

ALL OF THE RIGHT, TITLE AND
INTEREST OF STEPHEN JAY SONGER
IN AND TO: . . . ,

ALL OF THE RIGHT, TITLE AND
INTEREST OF STEPHEN JAY SONGER
IN AND TO ALL RECEIVABLES OWED
TO STEPHEN J. SONGER . . . ,

Defendants.

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

Civil Action No. 86-C-1100-B
86-C-1101-B
86-C-1102-B
86-C-1103-B
(Consolidated)

NOTICE OF DISMISSAL

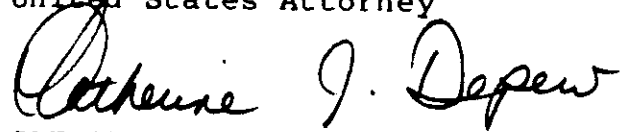
Plaintiff, the United States of America, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Catherine J. Depew, Assistant United States Attorney, hereby gives notice that certain defendant properties in the above-styled action are hereby dismissed without prejudice pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, specifically, the defendant properties described as:

1. All of the Right, Title, and Interest in and to all receivables owed to Stephen Songer by Kenneth Klein.
2. All of the Right, Title, and Interest in and to all receivables owed to Stephen Songer by Rick Strini.

3. All of the Right, Title, and Interest of Stephen Songer in and to:
- a. Apple Computer Corporation
 - b. Commvest Securities, Inc., Account No. 550-00836
 - c. Travel Consultants
 - d. Azusa Properties
 - e. E.F. Hutton Cash Fund, Investment Account & Asset Management Account, Account No. 6800198729
 - f. Date Palm Center, Joint Venture
 - g. KSA Investment Company
 - h. National Conveyor Corporation
 - i. Affiliated Management, including accounts titled Stephen Jay Songer and Songer Investment Account
 - j. Wall Street West, Inc.
 - k. Suzanne Michael, Inc.
4. One Ferrari, No VIN
5. 200 shares of FSC Corporation stock;

Respectfully submitted,

TONY M. GRAHAM
United States Attorney

A handwritten signature in cursive script, reading "Catherine J. DePew".

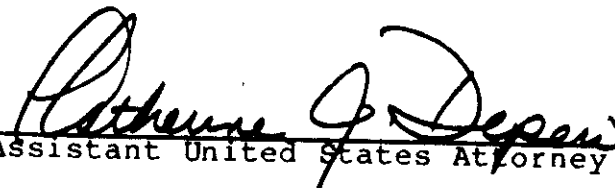
CATHERINE J. DEPEW
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 2nd^{ldp} day of December, 1988, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to:

Clark O. Brewster
5314 South Yale, Suite 600
Tulsa, Oklahoma 74135

Bernard L. Segal
595 Market Street, Suite 2010
San Francisco, CA 94105


Assistant United States Attorney

ldp

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ROBERT E. COTNER,

Plaintiff,

vs.

JUDGE KLEIN and JUDGE HOPPER
and TULSA COUNTY, D.A.,

Defendants.

No. 88-C-251-B

FILED

DEC 1 1988

Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

This matter comes before the Court on the issue of whether to allow an appeal *in forma pauperis*. The standard is, "Unless the issues raised are so frivolous that the appeal would be dismissed in the case of a nonindigent litigant ... the request of an indigent for leave to appeal *in forma pauperis* must be allowed." Ellis v. United States, 356 U.S. 674 (1958). The Court has previously held that the issues appealed are frivolous and not taken in good faith. Therefore, the request is denied.

IT IS SO ORDERED this 15th day of Dec., 1988.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEDERAL DEPOSIT INSURANCE
CORPORATION, in its corporate
capacity,

Plaintiff,

vs.

AUXANO, INC., an Oklahoma
corporation; GARY R. MERCER
and KENNETH ALFORD,

Defendants.

DEC 1 1988

Jack C. Silver, Clerk
U. S. DISTRICT COURT

No. 87-C-628-B

O R D E R

This matter comes before the Court on the motion of Plaintiff Federal Deposit Insurance Corporation in its corporate capacity ("FDIC") for summary judgment against Kenneth Alford ("Alford"). This motion was filed August 10, 1988. Defendant Alford has failed to respond.

The notes and guaranties which are the subject of this litigation are owned by Plaintiff in its corporate capacity. Plaintiff shows that as of August 10, 1988 Defendant Auxano was in default for \$213,322.67 and accrued interest of \$114,209.99. Plaintiff also shows Defendant Alford signed a guaranty for "50% of total outstanding debt."

A default judgment has been rendered against Auxano and Plaintiff shows no satisfaction has been given. Plaintiff moves for summary judgment against Defendant Alford under Fed.R.Civ.P. 56. Plaintiff shows by affidavit Defendant Alford owes \$163,766.33

as of August 10, 1988 with interest accruing at the per diem rate of \$52.59.

Rule 15(a) of the United States District Court for the Northern District of Oklahoma provides:

"Memoranda in opposition to such motion and objection shall be filed within fifteen (15) days ... after the filing of the motion or objection, and any reply memoranda ... shall be filed within eleven (11) days thereafter. Failure to comply with this paragraph will constitute waiver of objection by the party not complying, and such failure to comply will constitute a confession of the matters raised by such pleadings."

Since the Plaintiff's motions were filed August 10, 1988, Defendant's memoranda in opposition to the Motions for Summary Judgment were due no later than August 25, 1988.

As of November 30, 1988, Defendant has not filed his response to this motion and has not requested an extension of time within which to respond. Thus, under Rule 15(a), Defendant's failure to respond constitutes a confession of the matters raised by the Plaintiff's Motions for Summary Judgment. Thus, Plaintiff's motion is deemed confessed. For this reason, the Motion for Summary Judgment is sustained. A separate Judgment in accordance with this Order will be entered contemporaneously.

IT IS SO ORDERED this 1st day of Dec., 1988.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED
DEC 1 1988
Jack C. Silver, Clerk
U. S. DISTRICT COURT

No. 87-C-628-B

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC -1 1988

FARMERS INSURANCE COMPANY, INC.,)
Plaintiff,)

vs.)

HENRY WILKINS, BILLY MATT LOVE,)
and ARCO OIL AND GAS COMPANY,)
Defendants.)

W. J. OLIVER, CLERK
U.S. DISTRICT COURT

No. 87-C-695-B

O R D E R

This matter comes before the Court upon Plaintiff Farmers Insurance Company, Inc.'s Motion for Summary Judgment. For the reasons set forth below, the Motion for Summary Judgment is sustained.

Plaintiff insures Defendant Henry Wilkins's personal automobile. Wilkins also drives a company truck provided by Defendant ARCO Oil & Gas Company. On July 17, 1986, Wilkins was driving the company truck for personal use when he collided with Defendant Billy Matt Love. Defendant Love instituted a suit in state district court for injuries sustained in that collision. Wilkins alleges that Plaintiff, as a result of the above mentioned insurance policy, has an obligation to represent him in the state court litigation. Additionally, Arco asserts it is entitled to indemnity from Plaintiff for any amount for which it is held liable to Love. Plaintiff Farmers Insurance Company seeks a declaratory judgment pursuant to 28 U.S.C. §2202 that it has no obligation to any of the Defendants arising out of Wilkins's personal automobile insurance policy.

The relevant language in Wilkins's personal automobile insurance policy denies coverage either when an insured uses a vehicle without the owner's permission or for injury or property damage caused by any vehicle other than the insured car, which is owned by or furnished or available for regular use. These provisions are designed to cover Wilkins's incidental, permissive use of another's automobile and are not designed to cover the regular use of an automobile to which he has continued access. The "regular use" exception implicitly recognizes that:

"[A] policy which would give to an insured who simply took out a policy on a single owned car, coverage on any number of cars not owned by him, but furnished for his regular use, just as if he owned them, would be ruinous to an insurance company. . . ."

Globe Indemnity Co. v. Teixeira, 230 F.Supp. 451, 455 (D.Hawaii 1964), *aff'd.*, 349 F.2d 502 (9th Cir. 1965). The purpose and effect is to give coverage to the insured while engaged in the only infrequent or merely casual use of an automobile other than the one described in the policy, but not to cover him against personal liability with respect to his use of another automobile which he frequently uses or has the opportunity to do so. *See generally, Volpe v. Prudential Property and Casualty Insurance Co.*, 802 F.2d 1 (1st Cir. 1986).

Wilkins's employer, Defendant Arco Oil and Gas Company, issued Wilkins a truck to drive. Arco claims it issued the truck to him with the instructions that he drive it only while performing employment duties, and for commuting to and from work. Wilkins

claims that Arco led him to believe he also had access to the car for his own personal use. Although relevant to the ultimate issue of liability, this dispute is not determinative of whether Farmers is liable to any of the Defendants.

The Farmers Insurance Policy provides two exclusions relevant to this accident. The "regular use" exclusion provides:

"This coverage does not apply to:
10. Bodily injury or property damage arising out of the ownership, maintenance or use of any vehicle other than your insured car, which is owned by or furnished or available for regular use by you or a family member."

Plaintiff relies upon authority which interprets the words "regular use" to encompass company vehicles provided to employees to use only while working and in travelling to and from work. Farmers Insurance Co. v. Zumstein, 675 P.2d 729 (Az. App. 1983); Benjamin v. Plains Insurance Co., 650 F.2d 98 (5th Cir. 1981); The Zumstein court said,

"The facts of the particular case must be considered to resolve whether the use for which the vehicle was provided was intended to be for 'an unusual circumstance requir[ing] immediate use of the car,' or whether the vehicle was intended to be used or was available for use on a routine basis." (citations omitted).

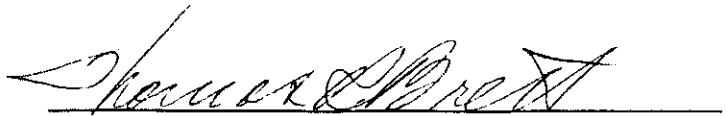
675 P.2d at 733. In this case, the car was available for Wilkins's use on a routine basis, although not necessarily for his personal use. If Wilkins argues that his use was not regular use, then he faces the problem of the "permissive use" exclusion.

The policy's "permissive use" exclusion clause provides that an "insured person" does not mean "[a]ny person who uses a vehicle

without having sufficient reason to believe that the use is with the permission of the owner." There is some dispute as to whether Wilkins was using the truck with Arco's permission when the accident occurred. Wilkins claims he had permission to use the truck for his personal use; however, Arco claims it did not give Wilkins such permission. Although relevant to ultimate liability, this dispute is not determinative of whether or not the policy covers the events of this case because of the "regular use" clause. This truck was provided for Wilkins's "regular use" regardless of any restrictions against his "personal use". If the truck was available for Wilkins's routine and personal use, the "regular use" exclusion precludes liability. If the truck was not available for Wilkins's personal use, the "permissive use" exclusion would prevent liability. Therefore, whether or not Wilkins was using the truck with Arco's permission at the time of the accident is immaterial because Wilkins's use of the truck was regular and falls outside of the coverage intended to be granted by the Farmers insurance policy.

It is therefore ORDERED the Motion for Summary Judgment be sustained and the case dismissed.

IT IS SO ORDERED, this 1st day of December, 1988.

A handwritten signature in cursive script, appearing to read "Thomas R. Brett", written over a horizontal line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 1 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

UNION TANK CAR COMPANY, a
Delaware Corporation,

Plaintiff,

v.

DEAL PETROLEUM COMPANY,
an Oklahoma corporation,

Defendant.

Case No. 88-C-1546E

DISMISSAL WITHOUT PREJUDICE

COMES NOW the plaintiff, Union Tank Car Company, a Delaware corporation, and pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, hereby files this notice of dismissal without prejudice before service by the adverse party of an answer.

Respectfully submitted,

UNION TANK CAR COMPANY, a
Delaware corporation,
Plaintiff

Richard H. Chapman, Esq.
FAGEL, HABER & MARAGOS
140 South Dearborn Street
Suite 1400
Chicago, Illinois 60603
(312) 346-7500

AND

JONES, GIVENS, GOTCHER, BOGAN
& HILBORNE, P.C.

By Gregory K. Frizzell
Graydon Dean Luthey, Jr.
Gregory K. Frizzell
3800 First National Tower
Tulsa, Oklahoma 74103
(918) 581-8200

ATTORNEYS FOR PLAINTIFF
UNION TANK CAR COMPANY

CERTIFICATE OF MAILING

I certify that on the 1st day of December, 1988, I caused to be deposited in the United States Mail postage fully prepaid, a copy of the above and foregoing instrument to the following:

Mr. Joe Deal, RSA
Deal Petroleum Company
2419 East Skelly Drive
Tulsa, OK 74170

Gregory K. Frizzell
Gregory K. Frizzell